



DECISION NOTICE – COM 297 STANDARDS COMMITTEE PANEL HEARING

Subject Member: Councillor David Boyes, Durham County Council

Standards Committee Panel Members:

- Councillor Bill Kellett (Chair)
- Councillor Jennifer Bell
- Councillor Alan Bainbridge
- Councillor Joan Nicholson (substitute)

Independent Person: John Dixon-Dawson

1. Preliminary Information

- 1.1 On 4 June 2020, a complaint was made by Mr Feenan (the Complainant), concerning the conduct of Councillor David Boyes (the Member) of Durham County Council.
- 1.2 On 9 July 2020, the complaint was referred for investigation following consideration in accordance with Durham County Council's Procedure for Local Assessment of Complaints.
- 1.3 In summary, it was said that the Member approved several racially discriminatory comments and one comment advocating violence against Travellers. Travellers are a racial group who are afforded protection under the Equality Act 2010. It was asserted that the conduct of the Member amounted to a failure to comply with the Council's legal obligations under Section 149 of the Equality Act 2020 and Council policy, specifically the Equality Policy 2020 at "Working with Gypsy, Roma and Traveller Communities".
- 1.4 The basic facts of the complaint were accepted by the Member, that he:
 - (a) posted a video clip of a Nature Reserve showing damage to the site.
 - (b) posted a comment alongside the video clip which read:

“This is the scene at the Nature Reserve today. Apparently a number of travelers [sic] were down today and left the tables in this state. The police have been informed.” This post was made on 7 May 2020 at 18:14hs and was made on the public Facebook page “Councillors David Boyes and Angela Surtees – Easington & Hawthorn”.

(c) liked two comments which stated:

- (i) “scum should be f**k*ng shot oxygen thieves”
- (ii) “And they wonder why many people do not welcome them”.

(d) followed up the latter comment above by commenting as follows:

“... it’s the same everywhere my friend. Like you, we fight to get the best for our communities and it’s maddening when people from outside the are [sic] do things like this.”

1.5 The Complainant considered that the Member demonstrated prejudice towards Travellers. That the Member’s actions have “engaged” offensive views to be expressed and potentially encouraged others to do so through his post on Facebook.

1.6 The Complainant considered that the singling out of those who may have caused the damage by reference to an entire racial group amounts to a breach of the Code. Also, that it was inappropriate for the Member to allege that damage was caused by Travellers without proof.

2. The Code of Conduct for Durham County Council

2.1 The relevant paragraphs at 4.3 of the Durham County Council Code of Conduct (the Code) are:

- (h) Behave in accordance with all legal obligations, alongside any requirements contained within the Council’s policies, protocols and procedures including the use of the Council’s resources.
- (j) Always treat people with respect, including the organisations and public they engage with.

3. Investigation

3.1 The Monitoring Officer appointed Stephen Pearson (the Investigating Officer) of Freeths LLP to conduct an investigation in respect of the complaint.

3.2 The final investigation report of 4 October 2020 made the finding that there had been a breach of the Code. A Standards Hearing Panel met on 14 December 2020 to consider the complaint.

4. Hearing to be in public or private

4.1 The Panel invited the Investigating Officer, the Member and the Independent Person to make representations on whether the Hearing should be in public or private.

4.2 The Investigating Officer stated that whilst it was a matter for the Panel, it would be appropriate for the hearing to be conducted in private. In his experience, such hearings were usually held “in camera”. In responding to the complaint, the Investigating Officer anticipated that the Member would be sharing information relating to his personal and family circumstances.

4.3 The Member confirmed that he agreed with the views of the Independent Person that the matter should be considered in private as he intended to refer to information relating to his personal and family circumstances.

4.4 The Independent Person acknowledged that there was a public interest in the matter being heard in public. However, there was a balance to be struck between this and the rights of the Member. He considered that this balance could be achieved by dealing with the matter in private and publication of a decision notice following the hearing.

4.5 The Monitoring Officer informed the Panel that representations had been received from a Local Democracy Reporter for this matter to be considered in public in the interests of accountability and openness. He had also referred to case law, which affirmed the importance of holding proceedings in public to promote public confidence and to combat uninformed and inaccurate comment and rumours about proceedings.

4.6 The Panel were informed of representations from the Complainant asking for this to be considered in public in accordance the Nolan Principles of Openness and Accountability and Articles 6 and 10 of the European Convention on Human Rights. The Complainant referenced that the earlier decision notices were already a matter of public record and available for inspection. Whilst the papers contained information relating to third parties, they had posted on a public Facebook page and their information was already in the public domain. He also confirmed that he had no objection to his personal details being discussed/shared in public.

4.7 The Monitoring Officer informed the Panel that the Charity Friends, Family and Travellers had made representations that as well as a general

public interest in the matter being heard in public, they had a legitimate interest in being able to and to ensure those they represent are able to attend and observe the hearing. It was in the interests of open justice, scrutiny of public bodies and the freedom to receive information under Article 10 of the European Convention on Human Rights.

- 4.8 The Monitoring Officer referred the Panel to the relevant Appendices within the Local Determination Procedure, which set out matters to be considered by the Panel when considering whether to exclude the press and public from the hearing. There is a presumption that matters should be heard in public. However, there are two circumstances in which it would be appropriate to exclude the press and public. The first related to confidential information and did not apply in this case. The second was whether the hearing was likely to include information, which is exempt under Schedule 12A of the Local Government Act 1972. Paragraph 1 (Information relating to any individual) of the Schedule might apply in relation to the personal data of the Complainant, the Subject Member and third parties referred to in Facebook posts.
- 4.9 In respect of the Complainant's personal information, he had confirmed that he consented for the matter being heard in public. The Monitoring Officer noted that whilst the third parties had posted on a public Facebook page, it is unlikely that they would have had any expectation that their information would form part of a hearing. However, she considered the information relating to third parties could be redacted to enable publication of the papers.
- 4.10 The Monitoring Officer asked the Investigating Officer whether it might be possible to consider the matter partly in public and exclude the press and public for part of the hearing to enable the personal information to be shared. He explained that he did not think this would be possible because the information would be shared by the Member in making his case.
- 4.11 The Panel deliberated in private and resolved that the press and public should be excluded from the hearing. In reaching this decision, the Panel took into account all representations received including those shared by the Monitoring Officer. In considering whether Paragraph 1 of Schedule 12A of the Local Government Act 1972 applied, they considered the public interest test. They acknowledged that from their representations received, there was clearly a significant public interest in the matter being heard in public. However, there was a concern that if the matter were to proceed in public, the Member may not be able to fully present his response to the complaint. This may impact on his rights under Article 6 of the European Convention on Human Rights, which was referred to by the Complainant.

4.12 The Panel agreed with the representations of the Independent Person that there was a balance to be struck. They considered that the public interest in maintaining the exemption under paragraph 1, outweighed that of the public interest in holding the matter in public. The public interest could be served by the publication of a decision notice in due course. Accordingly, the public broadcast of the hearing ended and the matter proceeded in private

5. Investigating Officer's Report

5.1 The Investigating Officer presented his report and findings for the Panel in relation to the following allegations:

- (i) whether the Member approved racially discriminatory comments;
- (ii) whether the Member approved a comment advocating violence against Travellers; and
- (iii) whether the Member encouraged or supported the making of offensive/potentially unlawful comments.
- (iv) whether the Member had a basis to establish that the damage at the Nature Reserve was caused by a group of Travellers.

5.2 In summary, the Investigating Officer did not consider that the Member was necessarily stereotyping all Travellers by making a complaint about a particular group in the initial post. He also considered that the Member treated the information given to him in relation to the damage caused in a reasonable manner.

5.3 The Investigating Officer did not consider that the Member had done anything wrong by posting the initial video. He drew a distinction between the active behaviour of a Councillor in "liking" a comment and his failure to effectively moderate comments on the Facebook page. The Investigating Officer considered that such moderation was not a direct requirement of the Member Code of Conduct, notwithstanding the overall duties under section 149 of the Equality Act 2010 on Councillors.

5.4 Having reviewed the social media posts provided as part of the investigation, the Investigating Officer found that the Member liked one offensive comment and a potentially one further offensive comment. He also noted that the Member had removed some comments and posted on 1 June 2020 that he would not tolerate "any comments....that are racist in any shape or form".

5.5 The Investigating Officer considered that there was no requirement on the Member not to respond to comments on the basis that some of their content could be regarded as inappropriate or discriminatory.

- 5.6 As to whether liking comments amounted to advocating violence towards Travellers , the Investigating Officer found that the Member could not be responsible for every comment made on a thread and noted that the Member during interview clearly disassociated himself with some of the more violent and offensive comments. The Investigating Officer spoke to the author of one of the posts and accepted that he was not advocating violence towards anyone, rather expressing anger over damage to a valued local amenity.
- 5.7 The Investigating Officer considered that it was understandable that the Member would react angrily to the damage caused at the Nature Reserve. However, this did not excuse the “liking” of the comments set out at paragraphs 1.4(c)(i)-(ii) above.
- 5.8 Whilst the Investigating Officer did not find that the Member had posted any offensive comments himself, the liking of the offensive comments did amount to a failure to treat those who were the subject of such comments with respect. The liking of the comments lent support and credence to them.
- 5.9 The Investigating Officer found that liking the posts also amounted to a failure to act in accordance with the Council’s legal obligations under the Equality Act 2010 and to support the associated Council policies in relation to Equality and Working with Gypsy, Roma, and Traveller Communities, contrary to paragraph 4.3(h) of the Member Code of Conduct.
- 5.10 The Investigating Officer stressed in his report that there is no evidence that the Member was prejudiced against the Traveller community and noted that on reflection the Member recognised that he had acted unwisely.
- 5.11 Having presented the report, the Investigating Officer requested that the Panel hear from the Complainant. The Complainant confirmed that he considers Travellers to be a racial group who are entitled to protection under the Equality Act 2010. The Complainant explained in detail that he considered that the comments made by the Member and others, demonstrate a stereotype or trope. The use of the words “apparently a number of Travellers” was not appropriate to assign this to a particular group, it would not have been acceptable to say a group of Jews, for example.
- 5.12 The Complainant stated that it was irresponsible of the Member to link the damage to that group, if it was people that would have been fine but the Member referred to Travellers. From the post there were over 30 comments which included further stereotypes in relation to Travellers.

The Complainant considered that if the post had referred to “People” it is unlikely to have generated the responses which followed. The Member had a responsibility to step in and address and remove the comments made. The Complainant acknowledged that the Member did do this in respect some of the comments but he has failed to address the stereotypes and tropes. The failure to appropriately respond to the comments demonstrated a blind spot on the part of the Member.

- 5.13 The Complainant was asked whether there should be a distinction between the likes and removal of posts, specifically whether it was believed whether the Member is as responsible for the comments as well as the like. The Complainant confirmed that the Member may not be the hand behind the post but when posting about a group which has a bi-cultural lifestyle, he as an Administrator of the page has a responsibility in law. The Complainant referred the Panel to the Equality and Human Rights Commission (EHRC) report in respect of anti-Semitism and the labour party, which addresses this point and considers that ‘likes’ and ‘shares’ can amount to a breach of the law and in this case, the Member Code of Conduct.
- 5.14 The Complainant explained that the narrative creates its own culture. Using language such as ‘our community’, ‘our nature reserve’ creates a distinction between those who caused the damage. This reinforces the suggestion that one group is “us” and another group “is not us”. The Member should be careful that his Facebook page is not used to reinforce the stereotypes as they were in the posts of 7 May and two on 1 June.
- 5.15 The Complainant was asked for his views on potential sanctions. The Complainant referred to the sanctions available to the Panel in turn. He stated that an apology had not been made to a group which he is involved with. He considered that censure predicates an apology as has been the case in other complaints considered by a Hearing Panel.
- 5.16 The Complainant stated that he considered that the Member has a blind spot, demonstrated by the Member’s response as to whether he had breached the Code, and that it might be appropriate for the to undergo training. Although, the Complainant queried whether training would be effective.
- 5.17 The Complainant also considered that in light of the seriousness of this case, it would be reasonable and proportionate for the Panel to remove the Member from his role on the Safer and Stronger Communities Scrutiny Committee.

5.18 There were no questions of the Investigating Officer by the Panel, the Member or the Independent Person. The Panel thanked the Complainant for his attendance prior to him leaving the hearing.

5.19 The Clerk confirmed that the Complainant had presented statements from Friends Families and Travellers and The Traveller Movement summarising his work with Travellers. These had been shared with the Panel for information.

6. Submission of Councillor Boyes

6.1 The Standards Committee Panel invited representations from the Member. The Member first outlined that there were a lot of comments made by the Investigating Officer and the Complainant which he did not agree with. The Member observed that he is the joint administrator for the social media page but he is the only one who is before Standards Hearing Panel, for this reason he considers he has been singled out.

6.2 The Member explained to the Panel the context in which the original post was made. The Nature Reserve is an important public amenity space for the local area, which is also a memorial site for those who died in a mining disaster in 1951. Local people consider the site to be like 'consecrated' ground. In 2019, there had been extensive damage caused to the site, which had taken six weeks to repair. Given the importance of the site, this had caused significant anger amongst local residents, as did the damage to the picnic tables that had been the subject of the post on 7 May 2020.

6.3 The Member explained that he had been told by a resident that the damage had been caused by Travellers. He had used the word 'apparently' to indicate that this was not confirmed. He did not consider that the post he liked about individuals responsible for the damage to be attributed to Travellers. The person who posted the comment confirmed as part of the investigation that he did not have Travellers in mind when he posted it. The Member considered it to be a turn of phrase rather than a threat.

6.4 As set out in the report of the Investigating Officer, the Member had removed comments and stated that comments that were racist would not be tolerated. The Member explained to the Panel that he had barred five people from the Facebook site.

6.5 In presenting his case, the Member referred to personal and family circumstances as well as how the matter had been dealt with by his political group. He strongly denied the allegation that he was racist and outlined the work he has done throughout his career in tackling racism.

The Member read a letter from Turners Funfair, members of the Showmen's Guild, stating that since they applied to hold their funfair in Easington Colliery, the Member has done everything he can to assist them, defended them when residents have raised concerns and never given any indication that he is discriminatory towards them.

- 6.6 The Panel asked the Member whether he received a lot of complaints about fly tipping in his area. The Member confirmed that he does, there has been money spent in the area on a gate to stop arson and anti-social behaviour. This is a sacred site to the people of Easington which is treasured by many visitors.
- 6.7 The Panel asked how many complaints come via Facebook and for confirmation whether he would get comments like this about any activity in the area. The Member confirmed that he does get a lot of complaints from Facebook and it does not matter who the damage is attributed to this always generates a lot of responses as the people of Easington are passionate about this site. The Member considered that the reaction would be the same towards anyone who ruined the site who caused wilful damage to the site. The response was not targeted at a particular group.
- 6.8 The Member was asked how he felt about the suggestion of training. The Member stated that he found the suggestion that training might not work insulting. However, he did not think he needed training. He had taken the comments at face value, he did not think the comments were threatening, rather a turn of phrase. The Member also opposed the suggestion that he be removed from the Scrutiny Committee.

7. Representations from the Independent Person

- 7.1 The Independent Person considered that based on the Council's policies and procedures that the liking of the comments did amount to a breach of the Code. However, the breach needed to be seen in context. He agreed with the Member that there is a deep-seated culture within the North East in respect of the regard people place on their community and mining history. He understood that the Nature Reserve is treated with particular reverence. The comments made on the Facebook page, reflect the strength of that feeling arising from damage to a special place, which was not necessarily intended to be directed at a particular group. The Panel needed to consider the efficacy of the law and the Code but at the same time understand the particular local circumstances.

8. Decision on whether there had been a breach of the Code of Conduct

- 8.1 The Standards Committee Hearing Panel considered the papers before them and the representations made. They upheld the Investigating Officer's findings as summarised at paragraphs 5.1 to 5.9 above and concluded that the Member had breached paragraphs 4.3 (h) and 4.3(j) of the Durham County Council Code of Conduct for Members.
- 8.2 In reaching their decision, the Panel noted that the Member argued very strongly that he was not a racist and had provided examples of his work to challenge racism. The Panel acknowledged this work and in no way disputed it. However, the issues for them to consider were whether or not there had been a breach of paragraphs 4.3 (h) and (j) of the Code in respect of comments made and liked.
- 8.3 The Panel found that in liking the offensive comments, the Member was reacting to the strength of feeling within the community regarding damage to a local site of particular importance both as an amenity space as well as a memorial for those killed in a mining accident. They accepted that the Member in liking comments had no intention of directing the sentiments of the comments at Travellers, taking into account that the Member had challenged some comments made (which was acknowledged by the Complainant). The Panel also took into account the statement in support of the Member provided by members of the Showmen's Guild.
- 8.4 However, the reference to Travellers in the original post created the perception that the comments which followed, were directed at them. The Panel acknowledged the comments of the Independent Person that whilst there had been a breach of the Code, the context in which the breach arose was important. The Panel consider the Members actions to have been careless rather than malicious or seeking to incite violence.

9. Sanctions

- 9.1 In accordance with the Council's Local Determinations Procedure, the Standards Hearing Panel invited representations from the Investigating Officer, the Member and the Independent Person as to whether action should be taken and if so, what action should be taken.
- 9.2 The Investigating Officer confirmed that he echoed the points made that this has been careless rather than malicious. An apology would appear appropriate. To remove the Member from his role with the Safer and Stronger Communities Scrutiny Committee from the Committee would be disproportionate and excessive.

- 9.3 The Member maintained that in liking the comment, he was not supporting threats or violence towards anyone. He considered it to be a turn of phrase. He accepted that he should not have mentioned Travellers in his initial posts. He accepts that he was careless. He should have referred to people and he would be willing to apologise for any offence that he may have caused.
- 9.4 The Independent Person confirmed that he had no doubt that this was not malicious on the part of the Member. His view is that training does work and adds value, all members should undergo training. The Independent Person did not agree that the Member should be removed from the Scrutiny Committee. The Member had learned from this experience and he could use that experience to the benefit of the Committee and the wider community.
- 9.5 Following deliberations, the Panel decided on the following sanction/ recommendations:
- (i) that the Member should issue an apology on his social media page and provide a copy to the Monitoring Officer so that this could be shared with the Complainant; and
 - (ii) the Monitoring Officer arrange training for all Members (including the subject Member) on the use of social media and the Council's Public Sector Equality Duty and related policies and procedures equalities;

10. Right of Appeal

10.1 There is not right of appeal to this decision which is final.

Signed Bill Kellett
 Chair of the Standards Hearing Panel

Dated: 18 December 2020