

DECISION NOTICE:

Standards Hearing Panel

COM 393 – COM 397 and FS-Case-51439036

Subject member: Councillor Pete Molloy

Panel Members: Councillor Joan Nicholson (Chair), Councillor Kathryn Rooney, Councillor George Smith

Independent person: Chris Hugill

Preliminary Information

1. Councillor Molloy was elected as a member to Durham County Council in May 2021 and as a member to Spennymoor Town Council in May 2019. As a County Council and Town Council member he is expected to behave in accordance with both the Durham County Council Code of Conduct for members and the Spennymoor Town Council Code of Conduct for members.
2. The Monitoring Officer acknowledged receipt of complaints dated 24th March 2022 and 19th April 2022 (COM 393 & COM 397) from an Officer and a member of Spennymoor Town Council alleging that Councillor Molloy had failed to comply with the member Code of Conduct. The issues raised were similar to those considered by a Hearing Panel of the Standards Committee on 23 November 2021 regarding the conduct of the same member (COM 322, 324 and 364).
3. A Decision Notice dated 5th October 2022 was issued that referred the matter for investigation which was undertaken by Mr Phillip McCourt (the Investigating Officer).
4. The Monitoring Officer received a Code of Conduct complaint from a member of Spennymoor Town Council which was considered by the Governance Lawyer on 16 May 2023. The complaint related to a post made on social media by Councillor Molloy during his time as both a Spennymoor Town Councillor and a Durham County Councillor (FS-case-51439036).
5. A Decision Notice was issued dated 25 May 2023 determining that the matter be referred to the Standards Committee for a Hearing.

COM 393 & COM 397

6. COM 393 and COM 397 in summary relates to two complaints one submitted by an Officer of the Town Council and one by the Chair of Spennymoor Town Council about an alleged failure of Cllr Molloy to comply with actions required of him as a result of a finding by the Hearing Panel of the Standards Committee of 23rd

November 2021 in respect of a previous complaint against the Councillor (COM 322, 323, 324 and 364). Further, the complaint concerned an email sent by Cllr Molloy to other Town Councillors dated 16th March 2022 and a social media (Facebook) post made by Cllr Molloy on or about 26th March 2022.

The Code of Conduct for Spennymoor Town Council

7. The relevant provisions of the Member Code of Conduct for Spennymoor Town Council are set out below.

- 2.4 (e) listen to the interests of all parties, including relevant advice from statutory and other professional officers, take all relevant information into consideration, remain objective and make decisions on merit.
- 2.4 (g) contribute to making the Authority's decision-making processes as open and transparent as possible to ensure residents understand the reasoning behind those decisions and are informed when holding the Authority to account but restricting access to information when the wider public interest requires it:

Behave in accordance with all legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures, including on the use of the Council's resources;

Value colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government.

Always treat people with respect etc.

- 2.4 (m) Not to bully or harass any person (including specifically any council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of the Code of Conduct.

Bullying may be characterised as: offensive, intimidating, malicious or insulting behaviour, or an abuse or misuse of power in a way that intends to undermine, humiliate, criticise unfairly or injure someone. Harassment may be characterised as unwanted conduct which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for an individual.

Bullying and/or harassment may take many forms, it could include but is not limited to age, disability, gender reassignment, race, religion, belief, sex and/or sexual orientation. Not to bring the role of Member or the local authority into disrepute and be aware that the actions and behaviour of a Member are subject to greater scrutiny than that of ordinary members of the public;

To hold the local authority and fellow Members to account and constructively challenge and express concern about decisions and processes undertaken by the Council whilst continuing to adhere to other aspects of this Code of Conduct.

- 2.5 It is expected that Members will at all times comply with requests as part of Code of conduct investigations and any arising outcomes, members will not submit malicious or trivial complaints.

Investigation

8. The Investigating Officer found that the alleged conduct fell within the purview of the Code in that the mediation required of Cllr Molloy was a part of duties as a Councillor and that in relation to the material sent and posted, the comments made by Cllr Molloy were made either from his Council email account or were clearly marked as being posted by Cllr Molloy in his role as a Member of the Council.
9. The Investigating Officer concluded that Cllr Molloy had failed to comply with the Council's Code of Conduct.

FS-Case-51439036

10. FS- Case-51439036 in summary relates to a complaint submitted by a member of Spennymoor Town Council about a comment posted by Cllr Molloy on Facebook.
11. The allegations related to whether Cllr Molloy had breached the Codes of Conduct by continuing *'to air wholly unacceptable and racist views in a public forum...'*

The Code of Conduct for Spennymoor Town Council and Durham County Council

12. The relevant provisions of the Member Code of Conduct for Spennymoor Town Council and Durham County Council are set out below.
 - Behave in accordance with all legal obligations.
 - Always treat people with respect.
 - Not bring the role of member or the Local Authority into disrepute and be aware that the actions and behaviour of a Member are subject to greater scrutiny than that of ordinary members of the public.

Outcome of Decision Notice

13. The Governance Lawyer found that Cllr Molloy has a right to freedom of expression which is protected under Article 10 of the European Convention on Human Rights and that statements on political issues or other matters of general interest attract enhanced protection under the law meaning that there are relatively few limits which can be imposed on 'political speech'. The Governance Lawyer further found that freedom of expression is not an absolute right which means that speech which spreads, incites, promotes or justifies violence, hatred or intolerance may be lawfully restricted.
14. The Governance Lawyer found that the Standards Hearing Panel would be entitled to conclude that the Facebook post subject of the complaint was made both in public and in Cllr Molloy's official capacity. The Governance Lawyer further found that the Panel would be entitled to conclude that the Facebook post fell within the scope of the Codes of Conduct for members.

15. The Governance Lawyer concluded that the Facebook post would not be protected under Article 10 of the European Convention on Human Rights and found that the content of the Facebook post was capable of amounting to a breach of one or more of the provisions of the Codes of Conduct.

Hearing to be in public or private

16. The Senior Lawyer (Commercial and Corporate Governance) advised the Panel of the considerations and confirmed that one of the complainants for COM 393 and COM 397 had not expressed a preference and it had not been possible to contact one complainant. In relation to FS-Case-51439036 the complainant had indicated a preference for the matter to be considered in public.
17. The Panel invited views of the Investigating Officer and the Governance Lawyer who confirmed that on balance they had no objection to the matter being heard in public with caution to be exercised regarding confidential employment matters. Councillor Molloy indicated that he did not have a preference as to whether the matter should be considered in public and the Independent Person also indicated that he had no objection to matters being heard in public subject to consideration of confidential employment matters not being shared in the public domain.
18. The Panel determined to hold the part of the Hearing dealing with Com 393 and COM 397 in private and to hold the part of the Hearing dealing with FS-Case-51439036 in public and the relevant documents were made available for publication.

Governance Lawyer's Decision Notice

19. The Chair invited the Governance Lawyer to present her Decision Notice findings and address the issue of whether there had been a breach of the Codes of Conduct in respect of FS-Case-51439036.
20. The Governance Lawyer directed the Panel to her Decision Notice and summarised the evidence and her findings. In accordance with the Council's Local Determination Procedure the Chair invited questions of the Investigating Officer. There were no questions from the Panel or the Independent Person.
21. The Member provided a point of correction explaining that in relation to his personal Facebook account he changed the privacy setting to 'friends' after the last Standards Committee Panel Hearing.

Member Response to Complaint FS- Case- 51439036

22. Councillor Molloy was invited by the Chair to give his response in respect of the complaints. Councillor Molloy confirmed that he disagreed with the findings of the Investigating Officer.
23. Cllr Molloy explained that there were two parts to the complaint against him, the first to establish that the social media posts were made in his capacity as a Councillor and secondly to establish whether the post was racist. Cllr Molloy explained that if he was not acting in his capacity as a Councillor then the matter would be brought to a close and the Panel would not be required to make any further findings.

24. Cllr Molloy explained that a Labour party Town Councillor brought the complaint that his post was wholly unacceptable and that he had aired racist views in a public forum. In Cllr Molloy's view the complaint was politically motivated. Cllr Molloy indicated that the complainant had not provided any evidence of the alleged unacceptable and racist views. Cllr Molloy went on to question whether the complainant had made a complaint to Ofcom about the comments made by the actor Adjoa Andoh given that she had such strong views on racism.
25. Cllr Molloy stated that the complainant is a member of a proven racist political party. Cllr Molloy referenced a report into antisemitic behaviour within the Labour party and commented that the complainant needs to get her own house in order before throwing accusations at others.
26. In relation to whether the post cannot be separated from his identity as a Councillor, Cllr Molloy stated that he did not deny that it was possible in his private capacity that he could be identified as a Councillor as he is a very proactive Councillor but this does not mean he is automatically acting in his capacity as a Councillor. Cllr Molloy stated that he is entitled to live a private life and have his own views on any subject and in a democracy, he is entitled to air those views. Cllr Molloy indicated his belief that he lives in a hypocrisy where views are aired and people face being cancelled. Cllr Molloy accepted that he did share the post on his Councillor Facebook profile but he only did so after the media had reported on the issue and identified him as a councillor, this is only reason it went on to his Councillor page, Cllr Molloy stated that if this was the wrong thing to do he apologised.
27. Cllr Molloy questioned how the media got hold of the complaint and noted that this had either come from Durham County Council or the complainant or the Labour party. Cllr Molloy confirmed that in his view he made the post in his capacity as a private individual and that it was obvious from the content of the post that he was not giving the impression of being in his capacity of Councillor. Cllr Molloy expressed his view that the goal posts had been moved to bring him within the code.
28. In relation to the second issue of whether the post was racist Cllr Molloy indicated that it was interesting to note that it was said to be racist to say '*Britain is a white man's country*' but not to say that '*Nigeria is a black man's country*'. Cllr Molloy noted that being white is part of being indigenous to the people of Britain. Cllr Molloy stated that some people say there are no indigenous people in Britain as all are immigrants however, he questioned why the UN has declaration on indigenous persons if this was the case. Cllr Molloy noted that he is not indigenous to Britain as he is Irish. Cllr Molloy expressed his view that it seems to be ok for others to be critical of white British people. Cllr Molloy stated that he was not critical of any one race of people but of all people, he just said they did not have to live here if they did not like it and in his view there is no problem with this. Cllr Molloy stated that he was not favouring any one race over another, it is about respecting the culture of all indigenous people in all countries. Cllr Molloy indicated that he has had lots of support from his constituents.
29. Cllr Molloy in summary indicated that some people would say he is a racist, but one man's racist is another man's patriot and he is proud to be a patriot. Cllr Molloy expressed his view that the word racism is overused.

Representations from the Independent person

30. The Chair invited views from the Independent Person on whether he considered that Cllr Molloy had been acting in his capacity as a Councillor and whether there had been a breach of the Codes of Conduct. The Independent Person confirmed that having read the papers and listened to the views expressed during the Hearing he believed that Cllr Molloy was acting in his capacity as a Councillor when he made the social media post and that the comments made did breach the Codes of Conduct.

Investigating Officers Report – COM 393 & 397

31. Following a Resolution of the Panel to move into Part B of the meeting the Chair invited the Investigating Officer to present his report and address the issue of whether there had been a breach of the Code of Conduct in respect of COM 393 and COM 397.
32. The Investigating Officer directed the Panel to his report and summarised his investigation and findings. In accordance with the Council's Local Determination Procedure the Chair invited questions of the Investigating Officer. There were no questions from the Panel or the Independent Person.
33. The Member sought clarification on two points, who had nominated Cllr Wood to be interviewed and the format of the interview notes. The Investigating Officer confirmed that Cllr Wood was spoken to as a Member of the Independent Group, and he was put forward at random. The Investigating Officer confirmed that it was his usual practice that noted of interviews in support of a complaint done as highlights but in order to ensure fairness the interview of the subject member is done as a transcript.

Member Response to Complaints

34. Councillor Molloy was invited by the Chair to give his response in respect of the complaints. Councillor Molloy confirmed that he disagreed with the findings of the Investigating Officer
35. Cllr Molloy expressed his view that he is not generally popular except with some of the independent politicians. He believes this is because he speaks his mind. Cllr Molloy indicated that it is correct to say that he is unpopular, and this does not bother him as he is not there to make friends, he is there to represent people of Spennymoor. He is not there to look after the Members or people of Spennymoor Town Council. Cllr Molloy stated that he believes this goes back to his time as a member of the BNP and whilst he has not been a member of the BNP since 2015 he would argue that his former membership is a contributing factor of why Town Councillors and other members go down the route of reporting me.
36. Cllr Molloy explained that in respect of his wife's complaint the majority of the members had the back of the Council Officer, he did not believe that any other relative would be treated in way his wife was. Cllr Molloy outlined the process undertaken in relation to his wife's complaint and the involvement of the Spennymoor Town Council Officer. Cllr Molloy also outlined further confidential information relating to the employment of an Officer.
37. Cllr Molloy in summary states that he hoped that there will now be work undertaken with all political party members at Spennymoor Town Council. He confirmed that he

has been County Councillor since 2021 and conducts himself in the same manner with Durham County Council but has had no problems.

Representations from the Independent Person

38. The Chair invited views from the Independent Person on whether he considered that Cllr Molloy had been acting in his capacity as a Councillor and whether there had been a breach of the Codes of Conduct. The Independent Person considered each of the 3 matters in turn;
- **Mediation** – Cllr Molloy complied with 2 of the 3 actions that were required from the outcome of the Standards Committee Panel Hearing in November 2021. The Independent Person expressed his view that he sees mediation as requiring the consent of both parties to participate in order to make it effective. Looking at the previous Decision Notice the Independent Person noted that the way it was framed was that the apology and training were actions to be taken and the mediation was a recommendation which perhaps reflected that it needed consent. Cllr Molloy did agree to participate in the mediation. The Independent Person expressed his view that he did not doubt that Cllr Molloy had a genuine belief that mediation would not work and it is perhaps a matter of regret that he did not raise his concerns at the time. Mediation would have been the obvious solution at the time if it had worked and this was a lost opportunity. The Independent Person stated that the fact Cllr Molloy agreed to it and then did not raise questions or concerns had led to a breach of the Codes of Conduct particularly of 2.5 of the Spennymoor Town Council Code of Conduct for Members.
 - **Email** – the Independent Person explained that he considered that the email was in breach of the Code of Conduct and agreed with the conclusions of the Investigating Officer. There was evidence of a breach of accountability and leadership. Further, calling Councillors '*spineless cowards*' was not helpful and was a breach of respect and a breach of the Nolan principles.
 - **Facebook post** – the Independent Person confirmed that he agreed with the Investigating Officers conclusion that the Facebook post amounted to a breach of principles in the Codes of Conduct.

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

39. The Panel reached its findings in respect of the complaints. The Panel considered the papers before them and the representations made in reaching its conclusions.

FS-Case-514139036

40. The panel first considered whether or not Councillor Molloy was acting in his capacity as a Councillor when the comments subject of this complaint were made. Whilst there is no legal definition of 'official capacity' the panel were satisfied that the cross contamination of Councillor Molloy's two Facebook profile pages and the fact that Councillor Molloy reposted the original post on to his Councillor Facebook page was sufficient so as to engage the Code of Conducts at the material time.
41. Notwithstanding that Councillor Molloy has since changed the privacy settings on his personal Facebook page the panel was satisfied that the post was made in both public and in Councillor Molloy's official capacity. Further, the panel determined that following the previous complaint heard by the standards committee hearing panel in

November 2021 Councillor Molloy ought to have been aware of the guidance cited by the Committee on standards in Public Life on official capacity and social media.

42. Having considered the Committee on Standards in Public Life Guidance the panel concluded that the Facebook post that was the subject of this complaint falls within the scope of the Code of Conduct for members.
43. The panel then went on to consider whether the comments made breached both the Spennymoor Town Council and Durham County Council Code of Conduct for members. The panel considered Councillor Molloy's submission that he had a right to freedom of expression and that in his view the complaint against him was politically motivated and that the comments made were not unacceptable and he did not make any racist remarks.
44. The panel did not accept this submission and concluded that freedom of expression is not an absolute right and that speech which spreads, incites promotes or justifies hatred or intolerance may be lawfully restricted. The panel noted the submission that race and religion are protected characteristics under the Equality Act 2010 and that discrimination because of a protected characteristic is prohibited under the Act. The panel concluded that Councillor Molloy's Facebook post was not a legitimate exercise of the right to freedom of expression.
45. The panel concluded that the Facebook post amounted to a breach of the following provisions of both the Durham County Council and Spennymoor Town Council Codes of Conduct including
 - Behave in accordance with all legal obligations.
 - Always treat people with respect.
 - Not bring the role of member or the Local Authority into disrepute and be aware that the actions and behaviour of a Member are subject to greater scrutiny than that of ordinary members of the public.

Com 393 and COM 397

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

46. The panel first considered whether or not Councillor Molloy was acting in his capacity as a Councillor when the comments subject of this complaint were made. The panel were satisfied that Councillor Molloy was acting in his capacity as a Councillor of Spennymoor Town Council in all three issues complained of. In respect of the failure to undertake mediation as recommended by the Standards hearing panel of 23 November 2021 the mediation required of Councillor Molloy arose as part of his duties as a Councillor. In respect of the email sent to Spennymoor Town Councillors dated 16 March 2022 this was sent from Councillor Molloy's Spennymoor Town Council email address. In respect of the Facebook post-dated around 26 March 2022 this was clearly marked as being posted from Councillor Molloy's Facebook page.
47. The panel then went on to consider each of the three issues in turn and whether they amounted to a breach of the Spennymoor Town Council code of conduct for members.

48. Issue one relating to the failure to engage in Mediation – whilst the Panel accepted that one of the outcomes of the standards hearing panel of 23 November 2021 was a recommendation for mediation subject to the agreement of the relevant town council officers and that mediation is a voluntary process that requires the consent of all parties the Panel concluded that Councillor Molloy failed to raise any concerns he had around the mediation process prior to making a determination not to engage. In failing to do so Cllr Molloy has shown disregard to the findings of the Standards Hearing Panel of November 2021. The Panel therefore conclude that Councillor Molloy has failed to comply with the Town Council's Code of Conduct in respect of paragraph 2.4 (g) and paragraph 2.5 namely 'it is expected that members will at all times comply with requests as part of Code of Conduct investigations and any arising outcomes'.
49. Issue 2 the email of 16 March 2022 – the Panel considered the wording of the email sent from Councillor Molloy to Spennymoor Town Council members particularly citing them as 'a bunch of spineless cowards' and concluded that this breached paragraphs 2.4 (h), (i), (j) and (m) of the Code of Conduct.
50. Issue 3 – the Facebook post of 26 March 2022 – the Panel considered that taken along with the email sent to town councillors on 16 March the Facebook post was sufficient so as to amount to a breach of the Code of Conduct. Whilst the panel heard Councillor Malloy's submissions around corrupt practice, they did not accept that this was sufficient to justify posting criticism of an officer in the public domain. The panel conclude that Councillor Molloy breached paragraph 2.4 (h) (i) (j) and (m) of the code of conduct.

Sanction

In accordance with the Council's Local Determination Procedure the Standards Committee Panel invited representations from the Investigating Officer, the Member and the Independent Person as to whether action should be taken and if so, what form the action should take.

The Panel recommended the following sanctions:

- Censure of Councillor Molloy.
- The Member undertakes training on Member officer relations.

Right of Appeal

There is no right of appeal from this decision which is final.

Councillor Joan Nicholson
Chair of the Standards Committee Hearing Panel

Dated 28 September 2023