

NORTH TYNESIDE COUNCIL STANDARDS SUB-COMMITTEE

HEARING DECISION – FULL DECISION NOTICE

Name of Authority:	North Tyneside Council
Member subject of allegation:	Councillor Olly Scargill (not in attendance)
Complainants:	Mr Frank Austin and Ms Alison Austin
Case Reference Number(s):	NT15.2022-23
Committee Members:	Councillor Frank Lott (Chair); Councillor Lewis Bartoli; Councillor Tracy Hallway (Deputy Chair).
Investigating Officer:	Mr Melvin Kenyon, Kenyon Brabrook Limited
Monitoring Officer:	Mr Stephen Ballantyne
Deputy Monitoring Officer:	Mr John Barton
Democratic Services Officers:	Mrs Sonia Stewart and Mr Scott McKeating
Independent Person:	Dr Stuart Green
Date and Time of Hearing:	1 December 2023 at 1.30p.m

Summary of Allegation

The complainants, Mr Frank Austin and Ms Alison Austin, allege that the Subject Member, Councillor Olly Scargill:

1. Posted on his Facebook page "*Cllr Olly Scargill – Your local campaigner*" an edited video clip of remarks made by the Council's Elected Mayor, Dame Norma Redfearn, when she spoke to a Motion at a full Council meeting held on 21 July 2022 (not 22 July 2022 as

stated in the complaint). That Motion concerned *"Honesty, integrity, and respect in politics"*.

2. In posting the edited video clip, Councillor Scargill had within less than a week failed to act with *"honesty, integrity and respect"* as he and all of the Councillors at the Council meeting, including him, had agreed to do.
3. Edited the video clip in such a way that the Mayor's comments were shown out of their *"true context"* and posted the following message immediately above the edited video clip: -
*"At last week's Full Council meeting, the Mayor attacked me for standing up for my residents.
Throughout my campaign, I had 3 main pledges: to save our green space, to tackle anti-social behaviour and to campaign for 24-hour care at Rake Lane.
Speaking about the last election, the Mayor thought it was appropriate to single me out (as the only new young member) in a clearly ageist outburst.
No amount of nastiness from this Labour Mayor will stop me standing up for my residents"*.
4. Made an *"utterly false"* comment in his Facebook page, namely, that the Mayor's comments were her *"response to my [Councillor Scargill's] election campaign earlier this year, which was against the Dutch-style roundabout and the 3,000 houses on green space, and for 24-hour care at Rake Lane."*
5. Was well aware that the comments made by the Mayor related to the Motion on *"honesty, integrity and respect"* in politics and not a later Motion moved by him and debated at the same Council meeting regarding the roundabout at Rake Lane.
6. Failed to ask commentators making abusive, personal and threatening comments about the Mayor on his Facebook page to stop doing so or to reprimand those who had made such comments.
7. Told a clear lie when he suggested that the Mayor's speech concerned his election campaign.
8. Edited the video clip of the Mayor's speech by adding titles and subtitles, and posted it on his Facebook page, knowingly ascribing a completely false context to her remarks.

9. In posting the video clip had shown total disregard for the safety of Councillors and candidates from online abuse and even physical threats and attacks and had shown total and utter contempt for the Council and elected members as a result.
10. By his actions failed to treat the Mayor with respect and had brought his role as Councillor and the Council into disrepute by publishing *“knowingly false and misleading information”*.

Additional Allegations

In addition to the above allegations, the Monitoring Officer at the time of the assessment of the initial complaint, Ms Jacqueline Laughton, identified further potential breaches of the Code of Conduct for members by way of misuse of Council resources and using those resources for political purposes.

Relevant Paragraph(s) of the Code of Conduct for Elected Members

The relevant paragraphs of the Code are:

a) Part 1 Paragraph 1 of the Code – Treating others with Respect

As a member:

You must treat other members and members of the public with respect.

b) Part 1 Paragraph 5 of the Code – Disrepute

As a member:

You must not do anything to bring your role or the Authority into disrepute.

c) Part 1 Paragraphs 7.1 and 7.2 of the Code of Conduct – Use of the Authority’s resources and facilities

As a member:

7.1 You must not misuse the Authority’s resources.

7.2 You must, when using the Authority’s resources or authorising their use by others: –

- a. Act in accordance with the Authority’s requirements; and
- b. ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate,

or be conducive to, the discharge of the functions of the Authority or of the office to which you have been elected or appointed.

Preliminary Issues

Non-Attendance

Councillor Scargill did not attend the hearing.

Councillor Scargill had declined several suggested dates for the hearing of the complaint made against him, stating that he had work commitments which prevented his attendance. Cllr Scargill had requested the timing of the hearing be in the evening. However, due to the logistics of holding a hearing of this nature and the need to deal with the complex issues contained in this complaint, the Chair was of the view that this was not practical to hold a hearing in the evening. The start time of 1.30pm was the latest time in the day that the Chair considered appropriate for the hearing of the complaint. Councillor Scargill was informed of the reasons why the hearing could not proceed in the evening. Councillor Scargill had proposed the date of 1 December 2023 for the Hearing.

Councillor Scargill was given notice of the date and time of the hearing when the agenda and hearing papers were delivered to him by Council courier on 15 November 2023. He was fully aware of his right to attend the hearing and make representations.

On the 30 November 2023 the Monitoring Officer was informed by both the Conservative Group Leader and the Deputy Leader on separate occasions that Councillor Scargill would not be attending the hearing.

On 1 December 2023 at 11.57 hours Councillor Scargill submitted to the Monitoring Officer a statement by way of e mail. The opening sentence of the e mail read *"Please see below my statement for **today's committee** to be read out"*. That clearly demonstrated that Councillor Scargill was not only aware of the hearing later that day but also confirmed that he would not be in attendance.

As the Sub-Committee could be satisfied that Councillor Scargill was fully aware of the date and time of the hearing and that he had made a conscious decision not to attend the hearing, the Sub-Committee was satisfied that it would be appropriate to proceed with the hearing in his absence.

Councillor Scargill's statement was read out during the hearing.

Procedural Point

Councillor Bones, the Conservative Group Leader, wrote to the Monitoring Officer on 24 August 2023 on behalf of Councillor Scargill and referred to Appendix 4 of the 'Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members'. The section 'Procedure for Standards Hearings' states therein, amongst other things, that on receipt of Forms A to E from a Subject Member, the Chair of the Standards Committee, in consultation with the Monitoring Officer will then *"confirm a date, time and place for the hearing, which must be within three months from the date that the report was completed"*.

As the final Investigation Report was received by Councillor Scargill on 22 May 2023, and the hearing before the Standards Sub-Committee would be held beyond the 3-month period referred to in the Arrangements document, Councillor Bones was of the view that *"the hearing cannot now take place as it would be specifically against the local arrangements agreed by Full Council"*.

The point raised by Councillor Bones was fully considered by the Monitoring Officer who provided legal advice on the procedural point raised by Councillor Bones to the Chair of the Standards Committee during the Pre-Hearing Assessment meeting with the Chair of the Standards Committee on 25 August 2023.

The Monitoring Officer responded to the procedural point raised by Councillor Bones in an email dated 31 August 2023 and set out the legal advice that he had given to the Chair of the Standards of Committee during the pre-hearing process meeting. That advice was included in the hearing papers and the legal advice included in pages 27 and 28 of the hearing papers was read out by the Monitoring Officer during the hearing.

The Monitoring Officer in his advice recited that on 26 May 2023 following receipt of the Investigator's final report, Councillor Scargill wrote to the Monitoring Officer stating that this complaint should not progress to a Standards hearing until the Monitoring Officer had reviewed the outcome of what Councillor Scargill considered to be a similar complaint. The Monitoring Officer, in the spirit of promoting the rules of natural justice, and seeking to achieve a fair hearing, acceded to Councillor Scargill's request,

and “*paused*” the complaint process until he had reviewed matters as requested by Councillor Scargill. The period of the “*pause*” in proceedings was between 26 May and 12 June 2023 (at the earliest) but could arguably have been said to have been as late as the 24 July 2023 because of further correspondence received from Councillor Scargill. The “*pause*” contributed to this hearing not taking place within 3 months of receipt of the Independent Investigator’s final report.

In addition to the request for a pause in the hearing process, it should be noted that the hearing was originally to be heard on 27 October 2023. However, because Councillor Scargill could not attend on that date, the hearing was vacated, and attempts made to re-arrange the hearing. Other dates in October and November 2023 were canvassed but due to Councillor Scargill’s commitments, the earliest, and most convenient date for his attendance was 1 December 2023. Therefore, finding a suitable hearing date on which Councillor Scargill could attend a hearing also delayed the hearing of the complaint.

It should also be noted that Councillor Scargill failed to return to the Monitoring Officer completed Forms A to E which would have provided his formal response to the Investigation Report as well as dealing with other practical issues relating to the hearing. That is despite the Code of Conduct requiring members to cooperate with any investigation and/or determination of a complaint.

The Monitoring Officer during the Pre-Hearing process and again at the hearing, referred specifically to paragraph 15 of the Local Arrangements document and the paragraph ‘*Revision of these arrangements*’ which states: -

“The Standards Committee/Sub-Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter.”

The advice of the Monitoring Officer to the Chair of the Standards Committee was that in the circumstances, it would be improper for the complaint against Councillor Scargill to not proceed to a hearing. However, ultimately, it would be a decision for the Sub-Committee to take as a preliminary matter, after receiving advice from him, on whether or not it should proceed to hear the complaint.

After hearing from the Monitoring Officer, the Sub-Committee concluded that there were three reasons why the hearing did not take place within 3-months of the receipt of the final Independent Investigator's report by Councillor Scargill. Firstly, Councillor Scargill's request for the complaint process to be paused. Secondly, the difficulty in arranging a mutually convenient date for the hearing of the complaint at which Councillor Scargill could attend, and thirdly, the failure by Councillor Scargill to co-operate with the pre-hearing process by failing to return Forms A to E, despite repeated requests for him to do so, which meant that the Monitoring Officer was unable to discuss the responses with the Chair of the Standards Committee in accordance with the process set out in the *'Procedure for Standards Hearings'*.

The Sub-Committee was also conscious of the overriding need for it to secure the *"effective and fair consideration of the complaint"*. That meant that on the one hand it was appropriate to be seen to be giving Councillor Scargill as much opportunity as possible to be able to engage in the complaint process and to be able to properly set out his position, whilst on the other hand ensuring that the complainants, Mr Austin and Ms Austin, had their complaint dealt with as quickly and as fairly as possible. In other words, to ensure that the rules of natural justice were applied equally to all parties.

In the circumstances, the Sub-Committee determined that it was appropriate on this occasion for it to depart from the *'Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members'* and to hear and deal with the complaint submitted against Councillor Scargill.

Exclusion of the press and public

Consideration was given as to whether a resolution to exclude the press and the public from the hearing was required.

Neither Councillor Scargill nor the Independent Investigator, Mr Kenyon, requested that the hearing, or parts of the hearing, be dealt with in private.

The *'Procedure for Standards Hearings'* states that that Standards hearings of this nature should be open to the public unless there is confidential or exempt information under Schedule 12A of the Local Government Act 1972. There is clearly *'exempt'* information in that the hearing papers contain information relating to individuals. In that regard, after considering

paragraph 10 of Schedule 12A of the Local Government Act 1972, the Sub-Committee concluded that the public interest would be better served by the hearing being dealt with in open rather than in private session.

There was therefore no resolution passed by the Sub-Committee excluding the press and public from the hearing.

Local Resolution

The Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members is clear that if there is evidence of a failure to comply with the Code of Conduct, there may still be an opportunity for a local resolution and avoid the need for a hearing. However, any local resolution is conditional on a complainant being satisfied with the outcome achieved by a local resolution.

On the final Investigation Report and its findings being sent to Mr Austin and Ms Austin and Councillor Scargill by the Monitoring Officer, he asked if they would consider a disposal of the complaint by way of local resolution.

Mr Austin and Ms Austin indicated that they were not agreeable to the matter being dealt with by way of local resolution. Councillor Scargill did not respond to the request to consider a local resolution as a means of resolving matters.

The matter has therefore proceeded to a hearing.

Hearing

The Chair stated that he was tasked with the responsibility of ensuring that there was a fair and efficient hearing and delay in reaching a decision on the complaint was minimised.

The Chair emphasised that the Investigation Report and its findings were focussed on Councillor Scargill's actions in posting on his Facebook page "*Cllr Olly Scargill – Your local campaigner*" a recording of part of a full Council meeting held on 21 July 2022. Mr Austin and Ms Austin complained that the recording was heavily edited by Councillor Scargill before he posted it. The recording was said to be only part of the Elected Mayor's speech. The recording was an extract taken from the Council's recording of the meeting which appeared on its Youtube channel. Accompanying the recording was commentary from Councillor Scargill that was said to deliberately take the Mayor's comments out of context.

Mr Austin and Ms Austin complained that the editing of the recorded footage had shown a lack of respect for the Elected Mayor and was designed to bring the Mayor, and by implication the Council, into disrepute.

The Sub-Committee heard from Mr Melvin Kenyon, the Independent Investigator, who presented his report and answered questions from members of the Sub-Committee and Dr Green, the Independent Person.

Findings of Fact

References in brackets below to paragraph numbers refer to paragraphs in the Independent Investigator's report considered by the Sub-Committee.

The Sub-Committee, following careful consideration of the papers and the submissions made to it by Mr Kenyon and the observations of Dr Green, and the statement submitted by Councillor Scargill on the day of the hearing finds the following:

Application of the Code

The Sub-Committee finds that: -

1. Councillor Scargill did not dispute that he was responsible for the production of the video clip on or about 26 July 2022 on his Facebook page "Cllr Olly Scargill – Your local campaigner" and the commentary accompanying the clip and the responses he gave to various comments on the Facebook page, including those asking about the context in which the Elected Mayor's comments were made. [Paragraph 8.1.2].
2. The Code of Conduct was engaged by the production of the video clip by Councillor Scargill on his Facebook page and the comments made by him regarding the video clip. This is because the contents of the video clip, (which were an edited extract of the Council's Youtube footage of the Council meeting) and the comments he made related to a full Council meeting and the business of the Council conducted at that meeting. The clip and commentary therefore relate wholly to "*Council business*" and were therefore

produced by Councillor Scargill in his capacity as a Councillor.
[Paragraph 8.1.2].

Publication of the Video Clip on the “Cllr Olly Scargill – Your local campaigner” Facebook page.

1. The video clip published by Councillor Scargill on or about 26 July 2022 on his Facebook page was indisputably taken from the Council’s Youtube recording of the Council meeting held on 21 July 2022. [Paragraph 8.2.5].
2. Councillor Scargill submitted to the Independent Investigator that the video clip produced by him *“has no content added or removed”*. That is patently not supported by the evidence. [Paragraph 5.4].
3. It is indisputable that the video clip has had *“special effects”* added to it by Councillor Scargill who said to the Independent Investigator that *“These [the editing of the Youtube footage] are the sort of tactics that are used in politics nationally. They put a lot of people off from going into politics”*. [Paragraph 7.5].
4. The *“special effects”* added in the video clip by Councillor Scargill included: –
 - The adding of subtitles,
 - The introduction of *“sinister”* music part way through the Mayor’s speech which increases in volume to the end of the speech,
 - The abrupt change of the footage from colour to black and white, the video stopping and the zooming in on the Mayor’s image and the clip ending with an *“unflattering”* facial expression.

[Paragraphs 7.2.1]

5. The content that has been removed from the video clip are the comments made by the Mayor at the beginning and end of her speech. The video clip shows 41 seconds of a 91 second speech made by the Mayor. Therefore, 50 seconds of the speech had been omitted from the video clip. [Paragraph 7.2.1].

6. Councillor Scargill chose to leave parts of the Mayor's speech out of the video clip. He told the Independent Investigator that *"By taking out her complimentary references to Conservative councillors I was taking out footage that didn't add anything to what I was trying to say though I am sure it would have made her [the Mayor] look a bit better if I had left it in there."* [Paragraph 7.5].
7. When commenting on the editing of the Youtube footage of the Mayor's speech, Councillor Scargill told the Independent Investigator *"The fading to black and white and the unflattering photo of the Mayor was just politics. Politicians don't choose flattering photos of their opponents"*. [Paragraph 7.5].
8. Councillor Scargill when commenting on the Mayor's speech and the tactics that he used in his May 2022 election campaign told the Independent Investigator that *"Politics is a dirty game and if you want to win you have to do things that some people would find distasteful. It is the kind of thing that all of the parties do."* [Paragraph 7.5].
9. Councillor Scargill accepted that some of the comments left by individuals about the Mayor after visiting his Facebook page and viewing the video clip such as *"She is appalling", "What a bitter and twisted woman", "Move into the retirement home", "Cantankerous old woman", "This is our Mule Normal Redfanny" and "Is that Biffa's mam?"* might have been *"over the line"*. He said that if comments are *"really nasty"* he or others *"hide them"*. [Paragraphs 7.2.3 and 7.5].
10. Presumably the comments referred to in the Independent Investigator's report at Paragraph 7.2.3 and which the Independent Investigator was able to read in the preparation of the report were not considered by Councillor Scargill to be *"over the line"* otherwise he, or others, would have had those comments *"hidden"*. [Paragraph 7.5].
11. Councillor Scargill did not accept that producing this video clip in the way he did put the Mayor's safety at risk. [Paragraph 7.5].
12. Councillor Scargill did not accept that *"sharing"* an edited version of the Mayor's speech, with *"special effects"* added, which he did not consider to be *"Heavy effects"*, constituted disrespect towards the

Mayor. He saw the complaint as being politically motivated and intended to *“ruin my [his] reputation.”* [Paragraph 7.5].

13. Councillor Scargill edited the video clip in such a way that presented the Mayor’s speech outside the context in which it was originally made. The editing presented her words as if they were made in response to the issues on which he campaigned during his election campaign. However, the Independent investigator concluded, and the Sub-Committee agreed, that Councillor Scargill *“knew it to be false to suggest to readers that the Mayor was attacking him for “standing up for his residents”. There was no factual basis for this and we found no evidence at all to suggest that she was doing that when she spoke”*. [Paragraph 8.2.5].
14. The edited video clip did misrepresent the context of the Mayor’s comments as claimed by Mr Austin and Ms Austin and this was found to be the case by the Independent Investigator. [Paragraph 8.2.5].
15. Councillor Scargill did falsely claim in his Facebook page, and in doing so misled the public, that the Mayor’s comments were an attack on him because he was *“standing up for his residents”*. [Paragraph 8.2.5].
16. Councillor Scargill suggested that in producing the video clip he was acting *“within the bounds of free speech and fair political comment”* and suggested that a politician such as the Mayor should have a *“thicker skin”* than members of the public. He referred to Article 10 of the European Convention of Human Rights – the right to freedom of expression. [Paragraph 7.5].
17. The competing principles of freedom of expression and the need to treat others with respect in accordance with the Code of Conduct need to be considered having regard to the Judgment given in **Heesom v Public Service Ombudsman for Wales** and the *“Guidance on Local Government Association Model Councillor Code of Conduct”* published by the Local Government Association. [Paragraph 8.2.1].
18. The Judgment in Heesom, amongst other things, makes it clear that Article 10 does not protect individuals from making statements which the publisher knows to be false. [Paragraph 8.2.1].

19. As stated in Paragraph 13 above, there was no basis to the claim made by Councillor Scargill that the Mayor was attacking him for “*standing up for his residents*” or any suggestion that the Mayor was trying to stop him from doing that. Councillor Scargill knew those claims to be false and those comments are not therefore afforded the protection conferred by Article 10 of the European Convention of Human Rights. [Paragraph 8.2.5].
20. The Youtube footage, which the Council has paid for and produced, is a Council resource for the purposes of the Code of Conduct and is produced so as to allow greater public access to the business of full Council. The footage is also a form of Council “*publicity*” as defined by the Local Government Act 1986. The Code of Conduct and the law therefore prevents the misuse of the Council’s Youtube footage and the use of such footage for political purposes. [Paragraph 7.6].
21. The addition of subtitles, music, the change from colour footage to black and white footage and the omission of 50 seconds of footage was the improper manipulation of a Council resource.
22. The presentation of a heavily manipulated excerpt of the Council’s Youtube recording of the Council meeting of 21 July 2022 by Councillor Scargill was for political purposes. The omission of some of the Mayor’s speech was to support Councillor Scargill’s particular stance on a matter. [Paragraph 7.6].

Findings as to whether there has been a failure to follow the Code of Conduct

The Sub-Committee, having read the papers, including the statement from Councillor Scargill, and having heard from the Independent Investigator, carefully considered whether one or more breaches of the Code of Conduct had occurred. In reaching its decision the Sub-Committee took account of the views of Dr Green, the Independent Person who was in attendance during the hearing and the Sub-Committee’s deliberations throughout.

Breaches

The Sub-Committee found that Councillor Scargill **had breached** the following paragraphs of the Code of Conduct for Elected Members:

Part 1 Paragraph 1 of the Code – Respect

As a member:

You must treat other members and members of the public with respect.

Part 1 Paragraph 5 of the Code – Disrepute

As a member:

You must not do anything to bring your role or the Authority into disrepute.

The Sub-Committee considered that the actions of Councillor Scargill in publishing a heavily edited video clip of the Mayor's speech with misleading text in his Facebook page "*Cllr Olly Scargill – Your local campaigner*" on or about 26 July 2022 showed a lack of respect towards the Elected Mayor, Dame Norma Redfearn. The way in which the video clip was edited and presented meant that the Mayor's speech was taken out of context and the claims by Councillor Scargill that the Mayor's speech was her attacking him for "*standing up for his residents*" was untrue. Those actions misled the public and brought his role as Councillor into disrepute.

Part 1 Paragraphs 7.1 and 7.2 of the Code – Use of the Authority's Resources and Facilities.

As a member:

- 7.1 You must not misuse the Authority's resources.
- 7.2 You must when using the Authority's resources or authorising their use by others: -
 - a. Act in accordance with the Authority's requirements; and
 - b. Ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the Authority or the office to which you have been elected or appointed.

The way in which the Council's Youtube recording of the Mayor's speech, a Council resource, had been used by Councillor Scargill, namely by heavily editing the recording and by adding special effects and removing parts of

the speech amounted to the misuse of a Council resource and in addition was used for political purposes.

Dr Green agreed that there had been breaches of the Code of Conduct outlined above.

Sanctions

The Sub-Committee considered the sanctions available to it and heard from the Investigating Officer, the Independent Person and read what Councillor Scargill had to say in the statement submitted on the day of the hearing.

The Sub-Committee had accepted and agreed with the views of Mr Kenyon, the Independent Investigator and Dr Green, the Independent Person that there had been a breach of the Code of Conduct.

The Sub-Committee had regard to the statement submitted by Councillor Scargill. In that statement it is clear that Councillor Scargill does not accept that he breached the Code of Conduct for Members. He considers that he has acted legitimately when he posted the edited video clip and the accompanying commentary and responses on his Facebook page. He does say that it was never his intention to "*cause offence to Norma*" and says that the video clip was "*not meant to be offensive*". He says that the complaints are politically motivated.

The Sub-Committee noted that Councillor Scargill did not show any regret or remorse for his actions that had prompted the complaint made against him, which as stated, he sees as being politically motivated.

Mr Kenyon suggested that Councillor Scargill should apologise to the Mayor and be asked to remove the video clip and accompanying commentary from his Facebook page. Dr Green agreed that Councillor Scargill should apologise to the Mayor and suggested that the apology should be as "*public*" as possible. Dr Green also considered that Councillor Scargill would benefit from training on the use of social media and how this could impact on the Code of Conduct.

The Sub-Committee determined that: -

1. A letter of apology be issued by Councillor Scargill to the Elected Mayor.

The letter of apology be supplied to the Monitoring Officer as soon as possible and the contents agreed by the Monitoring Officer (or in his absence one of his team) and the Chair of the Standards Committee before it is sent to the Elected Mayor.

2. That Councillor Scargill be requested to immediately delete the video that is the subject of this complaint and comments thereon from his social media platforms.
3. That Councillor Scargill be required to undertake training on the use of social media in terms of how such use can engage the Council's Code of Conduct; and
4. The decision of the Sub-Committee be reported to a meeting of the full Council for information.