



CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY

DECISION NOTICE

AUDIT AND GOVERNANCE SUB-COMMITTEE HEARINGS PANEL

Subject Member: Councillor Steve Tierney, Cambridgeshire and Peterborough Combined Authority

Panel Members:

- John Pye, Independent Member (Chair)
- Cllr Paul Hodgson Jones
- Cllr Martin Smart
- Cllr Chris Wiggan

Independent Person: David Pearl

Legal Adviser to the Panel:

Simon Goacher, Partner, Weightmans LLP

Investigating Officer

Alex Oram, CH&I Associates

1. The complaint

1.1 On 15 December 2023, the Mayor of the Combined Authority, Mayor Nik Johnson submitted a Code of Conduct complaint to the Combined Authority's Monitoring Officer regarding the alleged conduct of Cllr Tierney.

1.2 In his complaint, Mayor Johnson initially highlighted the following two comments that Cllr Tierney had posted to his 'X' (formerly Twitter) account:

- The apologists are out in force though, defending the indefensible. Just shows they could not care less about behaviour, only about pushing their own agenda.*
- Keep up the good work @AnnaBailey_Ely and @SamanthaHoy*

at calling out predators and bullies. Some will give cover for the worst, others aren't afraid to challenge. Well done.

- c There's a certain sort of man who is very brave when trying to intimidate ladies, but a total weakling in the face of another man. Its (sic) really quite pathetic.*
- d The way I see it, the sort of "man" who needs a "henchman" isn't a man at all. Weak weak weak.*

1.3 The post referred to at 1.2a above was posted when republishing a comment from Cllr Hoy, who at the time was a member of the Combined Authority's Overview and Scrutiny Committee in which she stated, "Stalking female staff in their own home??? Wow. Disgraceful." Cllr Hoy's post itself was posted in direct response to a statement issued on 15 November 2024 by Cllr Anna Bailey, a member of the Combined Authority, about the outcome of a code of conduct complaint against the Mayor.

1.4 Mayor Johnson highlighted in his complaint that Cllr Bailey's public statement on 'X' on 15 November 2023 was about the findings of a Code of Conduct investigation into his conduct; Mayor Johnson had been found to have failed to comply with the Combined Authority's Code of Conduct. Mayor Johnson stated in his complaint that a comment made by Cllr Bailey in her statement, "A junior member of staff was instructed not to be alone in the office with the mayor" insinuated that there had been some form of sexual impropriety on his part, and therefore, Cllr Tierney's assertion that Cllr Bailey was "calling out predators and bullies" was disrespectful and damaged his reputation. Mayor Johnson stated in his complaint, "I reject and refute in the strongest possible terms the notion that I have ever behaved in such a repugnant manner."

2. The Code of Conduct for the Combined Authority

2.1 The relevant paragraphs of the Code of Conduct (the Code), applicable at the time of Cllr Tierney's actions, are:

Civility

1. Treating other members and members of the public with civility.

Civility means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a member you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a civil manner. You should not subject individuals, groups of people or organisations to unreasonable or excessive personal attack.

In your contact with the public you should treat them courteously.

Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return you have a right to expect courtesy from the public. If members of the public are being abusive, threatening or intimidatory you are entitled to close down any conversation in person or online, refer them to the Authority, any social media provider or if necessary, the police. This also applies to members, where action could then be taken under the Member Code of Conduct.

Bullying and Harassment

3. Not bullying or harassing any person.

Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.

The Equality Act 2010 defines harassment as 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'. The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation. [...]

Disrepute

7. Not bringing my role or Authority into disrepute.

Behaviour that is considered dishonest and/or deceitful can bring your Authority into disrepute. As a member you have been entrusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on other members and/or your Authority.

- 2.2 The Monitoring Officer appointed Alex Oram (the Investigating Officer) of Ch&I Associates to conduct an investigation in respect of the complaint.
- 2.3 The final investigation report of Mr Oram made the finding that there had been a breach of the Code. A Hearing Panel met on 28 January 2025 to consider the complaint.

3. Absence of the subject member

- 3.1 Cllr Tierney did not attend the Hearing. He had been advised of the date and arrangements via email. Throughout the process the Authority has used Cllr Tierney's Fenland District Council email address. In the past Cllr Tierney had suggested that people contact him at a non-business address. The Monitoring Officer explained that the Authority does not send confidential information to private email addresses and there was no reason provided why Cllr Tierney could not use his official email address. The Legal Adviser also explained that the Deputy Monitoring Officer had made a number of attempts to contact Cllr Tierney by telephone to discuss the hearing and had left a voicemail message but he had not responded.
- 3.2 The Panel decided unanimously that Cllr Tierney had been given every reasonable opportunity to participate in the process and all reasonable steps had been taken to notify him of the hearing date. The Panel expressed its disappointment that Cllr Tierney had failed to engage constructively with the investigation and agreed that the hearing should proceed in his absence.
- 3.3 Shortly before the conclusion of the hearing Cllr Tierney emailed the Deputy Monitoring Authority. The email was brought to the attention of the Panel. The Panel noted that Cllr Tierney stated that he was not aware of the hearing but that he would not have attended, even if he had been. The Panel maintained its decision that Cllr Tierney had been given every reasonable opportunity to attend.

4. Hearing to be in public or private

- 4.1 The Panel invited the Investigating Officer and the Legal Adviser to make representations on whether the Hearing should be in public or private.
- 4.2 The Investigating Officer stated that it was essentially a matter for the Panel. He highlighted the requirement for transparency in dealing with member conduct complaints but stated that this would be met by the publication of the decision notice.
- 4.3 The Legal Adviser stated that the hearing could be held in private if the Panel were considering information which is exempt under Schedule 12A of the Local Government Act 1972. He advised that some of the information to be considered fell within paragraph 1 of the Schedule (Information relating to any individual) in relation to the personal data of the Complainant, the Subject Member and third parties referred to in the Investigating Officer's report.
- 4.4 The Legal Adviser advised the Panel that a public interest test applied and the Panel had to consider whether the public interest in maintaining the

exemption outweighed the public interest in holding the hearing in public. He reiterated that there is a general public interest in transparency in member conduct cases but that needed to be weighed against the interests of individuals and the ability of the Panel to consider and fully explore all of the relevant issues without being inhibited by any concerns of disclosing personal data of individuals inappropriately.

- 4.5 The Panel resolved unanimously that the press and public should be excluded from the hearing. In reaching this decision, the Panel took into account all representations received. In considering whether Paragraph 1 of Schedule 12A of the Local Government Act 1972 applied, the Panel considered the public interest test and acknowledged that 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 personal data of individuals could be disclosed which would not be justified or proportionate.
- 4.6 The Panel considered that the public interest in maintaining the exemption under paragraph 1, outweighed that of the public interest in holding the hearing in public. The public interest could be served by the publication of a decision notice in due course. Accordingly, the Panel resolved to exclude the press and public and 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.
- 5.2 The Investigating Officer highlighted that there was no dispute from Cllr Tierney that he had posted the comments on X which were the subject of the complaint.
- 5.3 He stated that in his view Cllr Tierney was acting in his official capacity when he posted the comments:

- *The apologists are out in force though, defending the indefensible. Just shows they could not care less about behaviour, only about pushing their own agenda*

- *Keep up the good work @AnnaBailey_Ely and @SamanthaHoy at calling out predators and bullies. Some will give cover for the worst; others aren't afraid to challenge. Well done.*

- 5.4 He explained that this was because there was a sufficient connection between the comments and the business of the Authority. They were linked to comments which Cllrs Bailey and Hoy had made about the Mayor and the outcome of the code of conduct case involving him. The

first post specifically referenced Cllr Hoy's post which itself was a response to Cllr Bailey's statement about the code of conduct case against the Mayor. There was no evidence that the second post praising them for "calling out predators and bullies" could be referring to anything else other than the Mayor.

- 5.5 The Investigating Officer explained that members can post comments on social media in their personal capacity. The test of whether they do so in their official capacity must be applied considering the context and contents of the post. If the post relates to Authority business then it will be posted in an official capacity regardless of whether the member describes themselves as such.
- 5.6 The Investigating Officer explained that he concluded that Cllr Tierney was not acting in his official capacity when he posted:
- *There's a certain sort of man who is very brave when trying to intimidate ladies, but a total weakling in the face of another man. It's really quite pathetic.*
 - *The way I see it, the sort of "man" who needs a "henchman" isn't a man at all. Weak weak weak.*
- 5.7 He explained that the reason he reached this conclusion was because there was not a sufficiently clear link between the comments and the Mayor and Authority business.
- 5.8 The Investigator Officer explained that he was of the view that the comments which he considered were made by Cllr Tierney in his capacity as a member did breach the terms of the Code in that he failed to treat the Mayor with civility.
- 5.9 The Investigating Officer explained that the comments made by Cllr Tierney suggested that the Mayor was a predator and a bully and that he endorsed the comments of Cllr Hoy referring to the stalking of a female employee. The Investigating Officer explained that there had been no findings in the Code of Conduct investigation that the Mayor had acting in this way and none had been put forward in the investigation.
- 5.10 The Investigating Officer highlighted that Cllr Tierney is entitled to express any concerns he might have about the Mayor's actions as found by the Code of Conduct investigation and that this extends to an ability to express his opinion on the Mayor's competence as a Mayor. He stated though that the Code of Conduct also makes it clear that individuals should not be subject to unreasonable or excessive personal attack.
- 5.11 He stated that in his view Cllr Tierney's unsubstantiated comments about Mayor Johnson saw him cross the line from legitimate political

comment to an unreasonable and excessive personal attack; his reference to predators was particularly uncivil given that it is a term typically considered to have strong negative connotations that imply that the person being referred to is exploitative, harmful, and dangerous.

5.12 The Investigating Officer stated that he did not consider that in making these comments Cllr Tierney had breached the paragraphs of the Code relating to bullying or disrepute.

5.13 The Investigating Officer highlighted the need to consider Cllr Tierney's right to freedom of expression under Article 10 of the European Convention on Human Rights. He highlighted the relevant case law in his report and that political expression enjoys a high degree of protection. However, he stated that mere personal abuse is not protected. He stated that any interference with Cllr Tierney's rights under Article 10 arising from a finding he had breached the Code would be justified and proportionate.

6. Response of Councillor Tierney

6.1 Cllr Tierney was not present. However, the responses which he had given when he was first notified of the complaint and his comments on the Investigating Officer's draft report were carefully considered by the Panel.

6.2 In his initial response to the complaint Cllr Tierney indicated that he was not posting his comments in his capacity as a member of the Authority but in a purely personal capacity, he highlighted that his X account states, "Retweets/likes (are) not endorsements. Personal views only." He also highlighted that he did not name any individual in his tweets. He also stated that the comments were his personal opinion.

6.3 In response to the draft report Cllr Tierney stated that he believed that the provisional finding that he breached the Code was ludicrous. He stated, "the tweets being complained about are very very very tame and do not at any time name any individual. The fact that you, or the complainant, imagine they refer to a particular person is your own issue, not mine." He stated that the comments were his personal opinion and that he was not acting in his capacity as a member for the Authority when he posted them.

7. Representations from the Independent Person

7.1 The Independent Person considered that the report by the Investigating Officer was very clear and thorough. He stated that he agreed with the findings of the Investigating Officer that Cllr Tierney had breached the paragraph of the Code relating to civility in relation to the two comments identified.

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

Conduct

- 8.1 The Panel carefully considered all of the papers before them and the representations made. The Panel unanimously accepted the findings of the Investigating Officer in respect of the other two comments made by Cllr Tierney namely the following:

There's a certain sort of man who is very brave when trying to intimidate ladies, but a total weakling in the face of another man. Its (sic) really quite pathetic.

The way I see it, the sort of "man" who needs a "henchman" isn't a man at all. Weak weak

- 8.2 Whilst, given the other posts, the Panel understood why the Mayor believed Cllr Tierney was referring to him, unlike those other comments, there was not a sufficiently clear link, on balance, to find that the posts related to Authority business. Therefore, the Panel agreed with the Investigating Officer's conclusion that these comments were not made by Cllr Tierney in his capacity as a member of the Authority.
- 8.3 The Panel also unanimously upheld the Investigating Officer's findings that Cllr Tierney had breached the paragraph of the Code in relation to civility in respect of the two comments identified, namely the reference to "defending the indefensible" and "calling out predators and bullies". The Panel found that Cllr Tierney breached the code in making these comments, in that he had failed to show civility to the Mayor in making the comments which he did. The comments were abusive and there was no evidence to substantiate the suggestion that the Mayor was a "predator" which is a very serious suggestion to make. The Panel unanimously accepted the findings and rationale expressed by the Investigating Officer.
- 8.4 The Panel also unanimously accepted the findings of the Investigating Officer that, in respect of these two comments namely the reference to "defending the indefensible" and "calling out predators and bullies", Cllr Tierney had not breached the paragraphs of the Code in relation to bullying or disrepute.
- 8.5 The Panel unanimously expressed disappointment that Cllr Tierney had failed to engage constructively with the process and the investigation.

9. Sanctions

- 9.1 Following deliberations, the Panel considered sanctions. The Panel expressed the view that under the current law the sanctions currently available are extremely limited and expressed disappointment that sanctions which may have a greater impact are not currently available.

9.2 The Panel decided on the following sanctions/ recommendations:

- (i) that the findings of the Panel should be published; and
- (ii) that the findings should be reported to the Combined Authority Board with the recommendation that;
 - The Board should ask Fenland District Council to remove their nomination of Cllr Tierney as a substitute member for the Overview and Scrutiny Committee and should not consider him again as a nominee for any position within the Combined Authority before municipal year 2026/27;
 - The Board consider how greater clarity can be provided on the respective roles of members of constituent authorities within the Authority, in particular when they are using social media.

10. Article 10

10.1 In reaching its conclusions the Panel considered Cllr Tierney's right of freedom of expression under Article 10 of the European Convention on Human Rights. The Panel recognised that political expression enjoys a higher degree of protection.

10.2 The Panel unanimously agreed with the representations of the Investigating Officer that the comments which breached the Code amounted to excessive personal abuse, given their seriousness and that they were not substantiated by any findings or evidence. The Panel concluded that any interference with Cllr Tierney's rights was lawful, justified and proportionate given the sanctions available.

11. Right of Appeal

11.1 There is no right of appeal to this decision which is final in accordance with the Authority's procedure set out in its constitution.

Signed John Pye
 Chair of the Hearing Panel

Dated February 2025