

Case Reference:	CL77/67
Subject Member:	Councillor Robert Brierley
Subject Member Representative:	Councillor Paul Maiden
Complainant:	Roisin McLaughlin
Sub-Committee Members:	Councillor M W Winstanley (Chairman) Councillor S Dewhurst Councillor M McLaughlin
Monitoring Officer:	Brendan Whitworth
Investigating Officer:	Linda Comstive
Witnesses:	
Independent Person:	Greg Byron
Legal Advisor to the Panel	David Kitson
Clerk to the Panel:	Diane Adshead
Date of Hearing:	28 September 2018

1. The hearing took place to consider and determine (in accordance with the Localism Act 2011) whether the Councillor had failed to comply with the Council's Members' Code of Conduct as alleged.
2. The Sub-Committee was convened under the Council's 'Arrangements for dealing with complaints about the Code of Conduct for Members as at August 2015'.
3. The complaint concerned allegations that the Councillor had gained access to a restricted building under false pretences, had sought to discuss confidential information relating to a constituent, and had verbally abused an Officer when asked to leave the building, as well as threatening their employment with the Council.
4. The Councillor had refused to engage with the Investigating Officer or provide any evidence in support of his position prior to the hearing, aside from stating that the Monitoring Officer (MO) had breached the Council's rules regarding standards complaints on the basis that he had failed to send the allegations to him within 5 days of the complaint being made, and that he had no intention of making a response.

5. The MO responded to the Councillor stating that there had been no breach of procedure, however the Councillor sought to repeat his position and again refused to engage with the investigation of the complaint.
6. At the start of the hearing the Councillor's representative Councillor Maiden sought to submit as evidence photographs of the exterior and interior of the building in which the alleged behaviour took place, which had since been vacated and had undergone cosmetic changes. Councillor Maiden stated that these photographs were relevant because they showed that the evidence provided by the witnesses could not be correct, specifically that they could not have seen what had happened from where they were positioned, and that the corridor in which the alleged incident took place was very narrow, casting doubt upon the witnesses version of events.
7. The Councillor was informed that in accordance with the Council's procedure because he had not submitted this evidence in advance of the hearing, nor had he stated that he would be presenting this evidence, the Committee would determine whether it should allow this to be admitted. Having assessed the photographs the Investigating Officer stated that she had no objection to the photographs being admitted, and accordingly the Sub-Committee agreed to their inclusion.
8. The Investigating then introduced her report and called a number of witnesses to give evidence and answer any questions the parties or the Sub-Committee had.
9. The Investigating Officer's summary of the complaint was as follows:
 - (a) On 20 October 2017 the Councillor gained access to Withnall House, a Social Services Council building. The building was not a public building at the time of the incident, and served as a staff office for the Specialist Assessment Service for Children, Adults and Families. Staff in this office deal with very confidential and sensitive information concerning children and families.
 - (b) It is alleged that the Councillor showed his Council ID badge as a member of staff was exiting the electric front door to the building, saying he had a meeting with a named member of staff and entered the building by way of 'tailgating'. The Councillor asked the member of staff if he could use the toilet, to which they agreed. Admin staff tried to locate the named member of staff but they were not in the office, and when contacted said that they did not have a meeting with the Councillor. Upon leaving the toilet the Councillor was told that he did not have a meeting with the named member of staff and that they were not in the building.
 - (c) A Manager could see from her desk that a man was in the corridor. After speaking with colleagues she became aware of the man's identity, and that he had been told that he did not have a meeting with the named member of staff as advised by Admin. The Manager went over to the Councillor and introduced herself, reiterating that staff had checked and that he did not have an appointment with the named member of staff. The Councillor kept repeating that he wanted to speak about the constituent and that they were "in a bad way". The Manager asked the Councillor to stop talking about the constituent, that there were issues concerning confidentiality, and she could not speak to him about them. She asked the Councillor to leave the building.
 - (d) The Councillor continued to attempt to speak about the constituent and was again told to stop and to leave the building. This continued and the Councillor became more agitated, increasing his volume. The Manager sought to walk towards the Councillor so that he would retreat to the entrance door and leave. The Councillor initially stepped towards the Manager, shouting "I will have your job for this". The Councillor was told that if he did not leave the Manager would have to call the police. The Councillor started to step backwards towards the door and left.
10. The Councillor (through his representative) stated that he had not acted in the manner alleged, and in summary he stated that:
 - (a) He had been invited into the building by the member of staff he had spoken to;

- (b) Whilst waiting in the corridor (after having been to the toilet) he was confronted by a lady who immediately started acting aggressively towards him, and who stated "you know you shouldn't be in here" and had asked him to leave. Upon being asked to leave the Councillor states that he apologised and quickly left the building through the same door at which he had been invited to enter;
 - (c) The witnesses could not have seen what had happened from where they were positioned, and that the corridor in which the alleged incident took place was very narrow, casting doubt upon the witnesses version of events;
 - (d) The witnesses had a preconceived view of him because the Chief Executive had allegedly sent an email to staff stating that no members of staff should be alone with the Councillor because he displays inappropriate behaviour and is aggressive towards women;
 - (e) There was a conspiracy against him and that he was being victimised by the Council; and
 - (f) He had been required to go before the Standards Sub-Committee a number of times previously as part of this conspiracy, and had been subject to various restrictions including removal of his iPad, and being allocated a single point of contact at the Council.
11. The Councillor also stated that he had not received the papers for the hearing with adequate time to consider them properly, and that he was being discriminated against on the grounds of disability (specifically based on his dyslexia). The Sub-Committee were informed that the Councillor:
- (a) had been in receipt of the draft report (which had not been amended) since March 2018;
 - (b) had refused to engage with the standards process despite multiple opportunities to do so, other than to state that he had no intention of making a response because the MO had not followed procedure (which was addressed and not accepted at the outset of the standards process);
 - (c) had been offered the assistance of a Democratic Support Officer to go through the papers in detail with him but had not taken this offer up.
12. The Sub-Committee considered the written and oral representations before them, and having consulted the Independent Person, on the balance of probability made the following findings of fact:
- (a) An incident occurred at Withnall House on 20 October 2017, however, it was unclear how long the incident had lasted;
 - (b) The Councillor did gain access to Withnall House, but there was insufficient evidence to determine if he had tailgated or was invited into the building. The Councillor had falsely claimed that he had a meeting with a member of staff within the building;
 - (c) The Councillor had repeatedly asked members of staff about a constituent and had talked about them in the corridor. The Manager told the Councillor that she could not speak about the constituent as there were issues of confidentiality and she did not have her consent, but that he ignored her request and continued talking about her. The Manager knew that the constituent was a client of Social Services;
 - (d) The Manager presented as someone who had experience of dealing with difficult situations in a professional and calm manner and that on 20 October 2017 she was calm and professional towards the Councillor;
 - (e) It was likely that the Councillor was loud, agitated and intimidating towards the Manager and shouted loudly. All the evidence confirmed the Manager's account that the Councillor walked closer and closer to her and was 'in her face'. The Manager had asked the Councillor to leave otherwise she said that she would call the police. The Manager had walked towards the door, and the Councillor started walking backwards facing her, finally she reached the exit door and opened it. As he left he was still shouting saying "social services is at it again"; and

- (f) The Councillor threatened the Manager's employment with the Council and said 'I will have your job for this'. The Manager was genuinely concerned about her job and worried about this threat. The incident affected her for the remainder of the day, she found it hard to concentrate on her job and felt the need to report the incident to her line manager to protect herself. Her line manager had made the decision to make the complaint because of her concerns about the incident and the threat to the Manager's employment.
13. The Sub-Committee sought representations from the parties as to whether the findings of fact constituted any breaches of the Members' Code of Conduct.
14. The Investigating Officer stated that the Councillor's behaviour occurred whilst he was acting in his official capacity as a Councillor, and that the Code of Conduct therefore applied. The Investigating Officer stated that the Councillor had breached 4 parts of the Code of Conduct, being:
- (a) Paragraph 3.1 – You must not (b) bully or be abusive to any person;
 - (b) Paragraph 4 – You must not (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature;
 - (c) Paragraph 5 – You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute; and
 - (d) Paragraph 6 – You (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage.
15. In response the Councillor stated that he had not breached any parts of the Code of Conduct, and reiterated that this was part of a continuing conspiracy against him by the Council.
16. The Sub-Committee considered the written and oral representations, and after having consulted the Independent Person made the following decision on the balance of probability:
- (a) The Councillor was acting in his formal capacity as a Councillor at the time of the alleged incident and therefore the Members' Code of Conduct applied;
 - (b) The Councillor had breached paragraphs 3.1(b), 5 and 6 of the Members' Code of Conduct;
 - (c) There was insufficient evidence to find a breach of paragraph 4 of the Members' Code of Conduct;
17. The Committee determined that it would consider whether any appropriate actions should follow or other recommendations should be made after having heard and determined whether a breach had occurred or not pursuant to the second complaint.
18. Following a finding that the Councillor had also breached the Code of Conduct in relation to the second complaint (ref: CL77/68) the Committee (after inviting and receiving representations from the Investigating Officer and the Councillor about appropriate actions or recommendations to Council, and having consulted the Independent Person) expressed their concern about the inadequacy of sanctions under the current standards regime.
19. The Sub-Committee were mindful that (by his own admission during the hearing) the Councillor had over a number of years been subject to various sanctions following previous findings of breach of the Members' Code of Conduct, but these sanctions were clearly inadequate to address the Councillor's behaviour.
20. In terms of sanctions under the Members' Code of Conduct, the Sub-Committee determined that the Councillor shall by the end of October 2018 send a written apology to the Manager.
21. The Sub-Committee also recommended that the Chief Executive and the MO consider whether there were any administrative measures (outside of the standards regime) that could be put in place:

- (a) for the purpose of protecting the health, safety and wellbeing of staff and third parties; and
- (b) to facilitate the proper discharge of the Council's functions.