

Case Reference:	CL77/68
Subject Member:	Councillor Robert Brierley
Subject Member Representative:	Councillor Paul Maiden
Complainant:	Janet Davies
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 over a number of months verbally abused and threatened the Council's Deputy Monitoring Officer (DMO) who had been appointed as the Councillor's sole point of contact.
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 call evidence from a number of other Councillors who were in attendance. It was explained that the Councillor had had numerous opportunities to put forward evidence as part of the standards process, and that he had not given any prior indication to the Council that he wanted to call such evidence. As such, allowing this evidence would be contrary to natural justice and fair process. Nonetheless, the Sub-Committee requested that the Councillor explain the nature of the evidence and what purpose it would serve with reference to the complaint being dealt with. The Councillor stated that the witnesses would be providing character evidence in relation to the DMO. The Investigating Officer was asked for her representations about this and strongly opposed the admission of the evidence.
7. In response the Councillor stated that to not allow this evidence would be to discriminate against him 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.
8. Having considered the representations the Sub-Committee refused the request to call this evidence on the basis that:
 - (a) despite having multiple opportunities to put his side the Councillor had failed to engage with the investigation and had not given prior notice that he wished to call this evidence; and
 - (b) it was not the appropriate forum in which to raise allegations against Officers of the Council.
9. The Investigating then introduced her report and called the DMO as witnesses to give evidence and answer any questions the parties or the Sub-Committee had.
10. The Investigating Officer's summary of the complaint was as follows:
 - (a) Since the summer of 2016 the DMO has been the Councillor's named contact within the Council. There are also arrangements in place for the Councillor's emails to go to a managed mailbox where they are then directed to the appropriate department or put on the Report it for Councillors App. If the Councillor has an urgent matter that cannot be dealt with by email, he is able to contact the DMO by telephone. The Councillor has been informed that he should not contact other officers directly because of past issues.
 - (b) The DMO alleges that the Councillor's pattern of behaviour during telephone calls over the course of 2017 has been very aggressive, threatening, intimidating, abusive, derogatory, insulting, rude and humiliating. The DMO has provided specific examples of the Councillor's behaviour and words that he uses in her complaint form.
11. The Councillor (through his representative) stated that he had not acted in the manner alleged, and in summary he stated that:
 - (a) The DMO was a liar;
 - (b) There was a conspiracy against him and that he was being victimised by the Council; and

- (c) 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.
12. 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 again 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.
13. 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) The DMO is a practising solicitor and as such has a legal duty not to mislead and to act with integrity. Her evidence is supported by contemporaneous file notes of telephone calls, and describe a pattern of behaviour by the Councillor over a long period of time, enough to find that he is consistently verbally abusive, aggressive, irate and very insulting.
 - (b) The Councillor makes calls to the DMO on a regular basis, frequently calling her "incompetent", "useless", "disgusting", "a disgrace", "a waste", "not fit for her job", "a soft child", "disrespectful" and "rude", and stating that she "bullies" him and that he "will report her to the Law Society", often swearing at her in the process.
 - (c) He had called the DMO on 26 April 2017 about his iPad and another Cllr. During the call he was abusive and rude, calling her "an idiot". The DMO had to terminate the call. Later that same day, on the Councillor's third call of the day, the Councillor was loud and aggressive and said to her "you don't know what you're doing". The DMO responded stating that the Councillor was being rude and abusive, and he responded "well take me to fucking court then you bitch".
 - (d) On 16 June 2017 the Councillor called the DMO about trying to tape record a member of staff who had objected to the same. During the call the Councillor was very agitated and shouted a lot, so much so that the DMO asked him to stop shouting. The Councillor complained about being treated badly and slammed the phone down.
 - (e) On 27 October 2017 the Councillor had called the DMO and demanded a meeting. The DMO had had to put the phone down due to the Councillor's behaviour. The Councillor rang back 5 minutes later asking for a grit bin for a church. The DMO explained that the Council could not put grit bins on private land, but the Councillor continued to demand a meeting. The DMO explained that the Councillor could not demand meetings, which made the Councillor shout more than usual. His outburst was vicious and the DMO was physically shaking after the call.
 - (f) On 29 October 2017 the Councillor made 3 calls to the DMO. On the first call he was aggressive and irate, stating "I am demanding that an officer come to X Street at 3pm. If they do not arrive the press will turn up. I am sick of you playing games with me. You have no legal right to do what you are doing. You are being disrespectful". The DMO tried to placate the Councillor without success. The Councillor spoke over the DMO stating that she was bullying him and not being respectful. He stated that what she was doing was illegal and he was sick of it. The DMO continued to try to explain that it was he who was being disrespectful to her. His tone of voice was threatening and intimidating, and the DMO therefore terminated the call.
 - (g) On the second call which took place approximately 2 minutes later, the Councillor was initially polite, but then started to rant stating "how disrespectful [officers] were". He claimed to have

treated illegally and said he believed that the MO was being ignorant and that the DMO was a "disgrace". The DMO terminated the call.

- (h) On the third call at about 3pm on 29 October 2017, the Councillor called the DMO again and ranted at her for approximately 20 minutes. The DMO explained that she had reported his request on the Report it App and had spoken to an officer, but he continued to complain angrily and in an unreasonable tone. He started to complain that he did not know who his contact was at Wigan & Leigh Housing and that he did not want to deal with the DMO anymore. The Councillor stated that he was disappointed that he had not heard from the MO and that sanctions were wrong and they need to write to him.
 - (i) The DMO explained that he had been sent a letter, but the Councillor kept repeating that it was illegal. The conversation went round in circles 4 or 5 times and the Councillor did not let the DMO speak, talking over her on each occasion that she tried to speak. The Councillor stated that he wanted respect and that a number of officers had been rude and disrespectful to him. The Councillor was extremely aggressive in his tone, and went on to refer to his iPad being taken off him without going through standards. The DMO explained, as she had on previous occasions, why this had happened. The Councillor then referred to the Chief Executive as "a liar" and referred to the MO and the DMO as a "disgrace", stating that "the whole of legal was useless" and that he would stand up and say so at Council". At this point the DMO told the Councillor that she would terminate the call because he was being abusive.
14. Upon the meeting having been reconvened and prior to the Sub-Committee giving their findings of fact (as set out above), the Investigating Officer stated that she needed to address the Sub-Committee about something that had occurred during the recess. The Legal Advisor asked the Investigating Officer to accompany him outside of the Chamber so that she could tell him the detail of what she was asking to submit, and in order that he was able to advise the Sub-Committee accordingly.
 15. Having heard from the Investigating Officer, the Legal Advisor and the Investigating Officer returned to the Chamber. The Legal Advisor informed the Chairman that the submissions should not be permitted but that the Chairman should reiterate to the parties that they must treat each other with respect.
 16. The Sub-Committee sought representations from the parties as to whether the findings of fact constituted any breaches of the Members' Code of Conduct.
 17. 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 paragraph 3.1(b) of the Members' Code of Conduct – 'You must not bully or be abusive to any person';
 18. In response the Councillor stated that he had not breached any part of the Code of Conduct, and reiterated that this was part of a continuing conspiracy against him by the Council.
 19. 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 behaviour and therefore the Members' Code of Conduct applied; and
 - (b) The Councillor had breached paragraph 3.1(b) of the Members' Code of Conduct.
 20. Following a finding that the Councillor had also breached the Code of Conduct in relation to the first complaint (ref: CL77/67) 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.
 21. 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.

22. 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 DMO.
23. 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.