

Case Reference:	CL77/71
Subject Member:	Councillor Robert Brierley
Subject Member Representative:	n/a
Complainant:	Mr. Craig Baker
Sub-Committee Members:	Councillor C Rigby (Chairman) Councillor P Draper Councillor M McLoughlin
Monitoring Officer:	Brendan Whitworth
Investigating Officer:	Linda Comstive
Witnesses:	Craig Baker
Independent Person:	Pauline Gregory
Legal Advisor to the Panel	Asif Ibrahim
Clerk to the Panel:	Diane Adshead
Date of Hearing:	19 November 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 Sub Committee considered a report of the Investigating Officer, Linda Comstive, which requested Members to consider allegations against a Councillor that he had breached the Council's Members' Code of Conduct.
4. The Investigating Officer then called upon the complainant as a witness to give evidence and answer any questions the parties or the Sub-Committee had.
5. The complaint concerned allegations that the Councillor had posted on Facebook, and later stated in person in a public forum, allegations which amounted to suggestions that the complainant and the Council had been involved in corruption pertaining to the transfer of the lease of Haigh Hall.

6. The Sub Committee was advised by the Investigating Officer that the complaint had been received by the Monitoring Officer on 6 April 2018. Councillor Brierley had not engaged in the investigation and had not at any point in the past six months provided any evidence to substantiate his claims against Mr Baker. He had advised the Investigating Officer on 1 October 2018 that he had a recording of a conversation between himself and Mr Baker and was asked to submit this as evidence but he did not. Following the seizure of his electronic equipment by the Greater Manchester Police (GMP) on 19 October, he had advised the Council that his evidence had been seized as part of the investigation.
7. Councillor Brierley had advised that he would not be attending any hearings in November and was also acting on advice from his solicitor that he should not attend as his evidence had been seized as part of a police investigation. He was informed by letter on 2nd November 2018, that the arrangements would remain in place for the hearing to convene.
8. The Sub Committee considered Councillor Brierley's reasons for not attending the hearing and agreed to proceed in his absence as he had been given six months prior to his equipment being seized by GMP to provide any recordings or evidence to substantiate the claims he had made against Mr Baker.
9. 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 investigation had established with a reasonable level of probability that Councillor Brierley had made the Facebook posting.
 - (b) Mr Baker was a reliable witness.
 - (c) Councillor Brierley's claim of qualified privilege had not been explained or reasoned. Qualified privilege without explanation or context was not available for Councillor Brierley's potentially defamatory posts on Facebook and his bribery allegations.
 - (d) That there was no evidence to support the Facebook posts made by Councillor Brierley. Mr Baker had never heard of the term 'executive passes' and never used that term at any of his hotels and that the accusations that these were given to Cabinet members and the Chief Executive and offered to Councillor Brierley were completely false. The investigation found no evidence of any 'executive passes' being given by Mr Baker or indeed any passes being given to anyone at the Council. The term 'executive passes' was not a term or type of pass that Mr Baker had ever heard of in the hotel industry. The allegations were untrue and Councillor Brierley's false posts could be construed as being defamatory and libellous.
 - (e) That on balance of probabilities that Councillor Brierley did say to Mr Baker on 22nd April 2018 that he had 'accepted from the Council thousands of pounds which had been transferred to an offshore bank account'. This statement was said in front of a large group of approximately 80 people outside Haigh Hall. There was no evidence of the Council bribing Mr Baker who was taking his own legal advice for defamation proceedings. The bribery allegations by Councillor Brierley were false and could be construed as defamation actionable as slander and libel.
10. The Sub-Committee sought representations from the parties as to whether the findings of fact constituted any breaches of the Members' Code of Conduct.
11. 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 3 parts of the Code of Conduct, being:
 - (a) Paragraph 3.1 – You must not (b) bully or be abusive to any person;
 - (b) 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

- (c) 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.
12. 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;
13. Following a finding that the Councillor had also breached the Code of Conduct, the Committee (after inviting and receiving representations from the Investigating Officer 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.
14. 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, and the these sanctions had limited impact in addressing the Councillor's behaviour.
15. The Sub Committee was mindful of the seriousness of the allegations of bribery that had been made by Councillor Brierley against Mr Baker and the Council. It was also mindful of the damage that this had potentially caused Mr Baker in a personal and professional capacity.
16. In terms of sanctions under the Members' Code of Conduct, the Sub-Committee determined the following;
- The findings of this hearing be reported in the press refuting the allegations made against Mr Baker and the Council by Councillor Brierley, and the findings made;
 - That Councillor Brierley's IT equipment and facilities be removed for the remainder of his term of office (May 2020); and
 - That Council be recommended to remove Councillor Brierley from sitting on any Committees for the remainder of his term of office (May 2020).