

Case Reference:	CL77/71
Subject Member:	Councillor Robert Brierley
Subject Member Representative:	n/a
Complainant:	Dr. Gena Merrett
Sub-Committee Members:	Councillor C Rigby (Chairman) Councillor M Winstanley Councillor A Thorpe
Monitoring Officer:	Brendan Whitworth
Investigating Officer:	Linda Comstive
Witnesses:	Dr Gena Merrett
Independent Person:	Pauline Gregory
Legal Advisor to the Panel	Asif Ibrahim
Clerk to the Panel:	Diane Adshead
Date of Hearing:	29 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. As a provisional matter, the Sub Committee agreed by resolution to open the meeting to the public. However, the paperwork would not be released and should remain confidential.
4. The subject member indicated he did not accept that the papers were confidential.
5. A provisional matter was raised by the Subject member, namely though he was not made aware of the Sub-Committee Hearing (this was disputed by the democratic services officer who referred the Subject member to his own comments 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.

6. The subject member confirmed that he would be representing himself and calling a witness. He also stated that he had additional evidence that he wished to present. The Investigating Officer and the Sub Committee concluded that the evidence was already part of the paperwork and was not therefore new evidence.
7. The Sub Committee adjourned to discuss the paperwork that the Subject member was referring to.
8. The Sub Committee agreed that it was convened to determine the complaint as outlined in the document pack and that the Subject member had plenty of opportunity to engage in the process and provide any evidence prior to the hearing.
9. The Subject member questioned the legality of the proceedings and cited maladministration of a 'kangaroo court'. He continued to challenge the proceedings so that the Chair could not conduct the business of the Committee. Accordingly, the Chairman gave the Subject Member a formal warning about his disruptive behaviour and advised him that if he continued, he would be asked to leave.
10. The Subject Member continued to be disruptive, addressing a monologue speech directly to the recording equipment. He then advised the Sub Committee that he would be leaving and that if the hearing continued in his absence that it would be misconduct in public office. He advised the Chairman that he had reported him to the police following an earlier hearing recommendation. He advised the Independent Person that she had recommended that this hearing had been brought about under false pretences.
11. The Subject Member then left the meeting of his own accord, though he was advised if he chose to do so, the meeting may still proceed in his absence.
12. The Sub Committee adjourned and determined to continue to hear the complaint in public following the disruption. The Chairman reminded everyone in terms of conduct within the hearing, and that though the Subject member had left of his own accord following receipt of a formal warning, had his behaviour continued, the Chair would have considered asking that the Subject Member be removed from the meeting.
13. 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.
14. 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.
15. The complaint pertained to the content of, and nature of a number of pieces of correspondence including a piece of election material, which was alleged to have contained false information.
16. The Sub Committee was advised by the Investigating Officer that the complaint had been received by the Monitoring Officer on 17 May 2018. The Subject Member had not engaged in the investigation and had not at any point in the past six months provided any evidence to substantiate his allegations against Mrs Merrett. The Investigating Officer had contacted the Subject Member on 2 August 2018 advising him that she had been appointed to investigate the complaint. The Subject Member advised that he had sent his replies to the complaint to the Monitoring Officer and that he had Qualified Privileges. The Investigating Officer tried to arrange to meet with Councillor Brierley as part of the investigating, however, he chose not to meet and had advised her that he would await the draft report.
17. The Sub Committee heard evidence from the complainant that Councillor Brierley had, during the 2018 Local Elections, advised the residents of Hindley Green in a leaflet and on a public FaceBook site that she had been dismissed from her post of headteacher and that she had been voted the worst councillor in Salford.

18. The Sub Committee considered the written and oral representations before them, and having consulted with the Independent Person, on the balance of probability agreed the following facts:
 - (1) The investigation had established the facts with a reasonable level of probability.
 - (2) Mrs Merrett was a reliable witness.
 - (3) It was an offence if an election leaflet contained false statements of fact about the personal character or conduct of a candidate in order to affect the return of a candidate at the election. 'GM4' contained a statement of fact that Mrs Merrett was dismissed from being a teacher. A reasonable person reading this letter would think if she was dismissed as a teacher, she did something wrong and left under a cloud. Mrs Merrett said that she did not leave under any cloud and was not dismissed. On balance of probabilities, the statement about Mrs Merrett being dismissed from her job and the implications it made, was a false statement. Councillor Brierley had not produced any evidence to support why he made this false statement of fact and that the statement had the possibility of being interpreted as a defamation of character.
 - (4) That Councillor Brierley's letter, on balance of probabilities, contained a second false statement about being voted the worst councillor in Salford. No evidence was provided to support such a statement.

19. 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.

20. The politically balanced 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;

21. 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 consulted the Independent Person, making the following recommendations;
 - (a) The Sub Committee agrees that Councillor Brierley must write a letter of apology to Mrs Merrett agreed by the Monitoring Officer and released to press to be put in the public domain.
 - (b) The Sub Committee also recommends that the Monitoring Officer considers whether there are any additional administrative measures that could be put in place against Councillor Brierley, such as time and frequency of use of the officers' time and the Council's resources.