

Case Reference:	CL77.83
Subject Member:	Councillor Robert Brierley
Subject Member Representative:	N/A
Complainant:	Frank Carmichael
Sub-Committee Members:	Councillor C Rigby (Chairman) Councillor P Draper Councillor M W Winstanley
Monitoring Officer:	Brendan Whitworth
Investigating Officer:	Linda Comstive
Witnesses:	Frank Carmichael
Independent Person:	Pauline Gregory
Legal Advisor to the Panel	David Kitson
Clerk to the Panel:	Diane Adshead
Date of Hearing:	16 July 2019

1. The Standards Sub Committee met to consider and determine (in accordance with the Localism Act 2011) whether Councillor Brierley had failed to comply with the Council's Members' Code of Conduct as alleged by the Complainant.
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 Councillor Brierley had drafted and distributed a 'leaflet' in support of Paul Maiden who at that time was standing for election to the Council, and that the leaflet contained untruths about then Councillor Carmichael (whose seat was not in fact up for election), specifically that Cllr Carmichael:
 - (a) had only spent £11,000 of the Brighter Borough monies allocated to him within the Hindley Green ward; and

- (b) had been told by Cllr Lord Peter Smith (the Leader of the Council) to spend the monies on Labour projects that were not within the Hindley Green ward.
4. Following the appointment of the Investigating Officer, Councillor Brierley had (by his own admission) refused to engage with the investigation or provide any evidence in support of his position prior to the hearing, aside from email correspondence early in the process between himself and the Council's Deputy Monitoring Officer in relation to potential election offences involving other persons.
 5. At the start of the hearing Councillor Brierley sought to submit as evidence a number of documents that had not previously been submitted. This was despite him being requested (on a number of occasions) to submit any such evidence prior to the hearing so that this could be considered properly by the Investigating Officer. This included being told verbally on 4 July 2019 and which was followed up by email, to which he responded thanking the sender for the reminder. Councillor Brierley claimed that he had not been informed that he had to provide evidence prior to the hearing, his representative had withdrawn from representing him a matter of days before the hearing, that he was dyslexic and that this should be taken into account, and that he could not have submitted the evidence in advance because he did not have a Council iPad.
 6. The Council's Order of Proceeding (made available on the day of the hearing) states at section 7 that should any party object to the admission of new evidence or documentation, the evidence cannot be introduced. However, the overarching "Arrangements for dealing with complaints about the Code of Conduct for Members as at August 2015" states at paragraph 14 that "*The Council...has delegated to the Chair of the hearings panel the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.*"
 7. The meeting was adjourned so that the Legal Advisor could review Councillor Brierley's documents. The Legal Advisor also spoke to the Investigating Officer and the Complainant about the documents during the adjournment. The Investigating Officer and the Complainant stated that they had no objection to documents (a), (c), (d) and (e) below being admitted:
 - (a) A newspaper article about a standards matter involving Ken Livingstone;
 - (b) An annotated copy of the document from the report pack setting out former Councillor Carmichael's Brighter Borough allocations;
 - (c) A copy of the leaflet distributed in Hindley Green by Councillor Brierley (which was also part of the report pack);
 - (d) A copy of a letter sent to Councillor Brierley by the Council dated 7 November 2018 regarding his Council iPad being removed by the police for an investigation;
 - (e) Three letters (from the Boys Brigade, St John's Church, and Hindley Green Football Club) which confirmed the receipt of grants allocated by the Complainant whilst a Councillor.
 8. In relation to the document listed as (b) above, the Investigating Officer and the Complainant stated that they had no objection to its admission, on the basis that a further document in the possession of the Complainant setting out more detailed figures about allocations of funding by the Complainant was admitted for context. The Investigating Officer and the Complainant objected to 2 of the documents being admitted.
 9. The Legal Advisor spoke to Councillor Brierley in relation to the admission of the further figures referred to above and stated that he had no objection to their admission.
 10. The meeting was reconvened and the Legal Advisor gave a brief overview of the documents to the Sub Committee, whilst also passing on the views of the parties consulted about the admission of those documents. The Legal Advisor informed the Sub Committee that the Investigating Officer and the Complainant had objected to 2 of the documents being put forward for admission, and gave advice that in addition to the objections made, both documents were in the view of the Legal Advisor not relevant to the matter being considered. Both Councillor Brierley and the Investigating Officer put forward their own arguments in relation to those documents.

11. After consideration, the Sub Committee determined that the 5 documents set out at 7(a) to (e) above, as well as the document put forward by the Investigating Officer on behalf of the Complainant and which set out more detailed information about the allocation of funds by the Complainant, should be admitted. The Sub Committee did not accept Councillor Brierley's arguments for allowing the documents to be admitted, in particular that he had been unable to submit evidence due to IT issues, but concluded that the admission of the documents would not be unreasonable and did not unfairly prejudice the Investigating Officer or the Complainant (who had in any case raised no objections to these documents being admitted). The Sub Committee refused to permit the admission of the other 2 documents.
12. The Investigating Officer introduced her report and called the Complainant to give evidence and answer questions from Councillor Brierley and the Sub Committee.
13. The Investigating Officer's summary of the complaint was as follows:
 - (a) During the May 2018 local elections the Complainant had written and distributed a leaflet to residents within the Hindley Green ward in which he expressed his support for Paul Maiden, who was standing as an independent for election to the Council. In the leaflet Councillor Brierley alleged that the Complainant (who was a Councillor at that time but whose seat was not up for election) had distributed £66,000 of the Brighter Borough funding, but only £11,000 of this had been distributed within the Hindley Green ward. The leaflet went on to state that the Complainant had been told by Councillor Lord Peter Smith (the Leader of the Council) how to spend the funding on labour group projects outside of the ward;
 - (b) The Complainant had not complained about the leaflet initially because he had not anticipated that residents would believe its content. The Complainant states that as time passed he became increasingly aware of the impact upon his reputation that the leaflet was having, and after considerable thought had also concluded that it was in fact his duty to report the breach. He had also wanted the public to know the truth and protect his reputation against what he stated were lies; and
 - (c) The Complainant had provided the Investigating Officer with figures he stated showed the actual distribution of the funding within the ward which was £25,808. The Investigating Officer accepted these figures as being correct, and that the allegation that the Complainant had only distributed £11,000 was completely untrue. The Investigating Officer also found the allegation that the Complainant had been told how to spend the funding was also untrue.
14. The Councillor stated that he had not breached the Code of Conduct as alleged, and in summary stated that:
 - (a) He was not acting in his capacity as a member of the Council when he drafted and sent the leaflet. Simply because he had signed off the leaflet as a Councillor, and despite the references he had made to him being a Councillor within the body of the leaflet, this did not mean that he was acting in that capacity. He referred to the Ken Livingstone case where Mr Livingstone was deemed not to be acting in his capacity as a member at the time of the allegations made against him;
 - (b) The figure of £11,000 was correct, and that Councillor Lord Peter Smith had required the Complainant to contribute part of his allocated funding to the Wigan Pride event, as he had every other Councillor;
 - (c) He did not have access to Council IT equipment, could not use the internet, and could not therefore check the figures by looking on the Council's website;
 - (d) The information he had was the only information available to him and he did not tell lies; and
 - (e) Councillor Paul Maiden (who was standing for election at the time) had assisted him with the leaflet and had typed the document for him.
15. Councillor Brierley also stated that he had not received the papers for the hearing with adequate time to consider them properly, that there was a missing detailed note of the discussion that took place

between the Deputy Monitoring Officer and the Independent Person, and that he was being discriminated against on the basis of his dyslexia. The Sub Committee were informed that Councillor Brierley:

- (a) had been in receipt of the draft report (which had not been amended) and which had been hand delivered to him on 7 November 2018;
 - (b) was told numerous times before the hearing that there was no detailed note of the discussion between the Deputy Monitoring Officer and the Independent Person (this was standard practice at the Council);
 - (c) had received the hearing papers through his then representative Councillor Maiden ten days before the hearing; and
 - (d) 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.
16. 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) That the figures in the leaflet were clearly incorrect and that the Complainant had in fact allocated much more within the Hindley Green ward than the £11,000 as alleged by Councillor Brierley; and
 - (b) That the Complainant had not been told by the Council Leader that he was to allocate the Brighter Borough funding outside of the Borough, other than being requested (as were all Councillors) to contribute to the Wigan Pride festival.
17. The Sub Committee sought representations from the parties as to whether the findings of fact constituted any breaches of the Members' Code of Conduct.
18. The Investigating Officer stated that Councillor Brierley'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 Councillor Brierley had breached paragraphs of the Code of Conduct, being:
- (a) Paragraph 3.1(b) – You must not...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(a) – You 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.
19. The Investigating Officer also stated that Councillor Brierley had breached a number of the General Principles set out in the Council's Code and at section 28(1) of the Localism Act 2011, namely:
- (a) 2.1 – Members must behave according to the highest standards of personal conduct in everything they do as a Member. In particular they must observe the following principles of conduct, some of which are set out in law.
 - (b) 2.7 – Honesty – Members should be truthful. Members should when communication to the public and in particular with the media or using social media, ensure that information concerning adopted policies, procedures and decisions of the Council are conveyed accurately and that confidential information is not released or commented upon;
 - (c) 2.9 – Respect for others – Members should promote equality by not discriminating unlawfully against any person or through material that promotes discrimination, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. Members should avoid personal attacks and disrespectful, rude or offensive comments against officers and public in all aspects of their role as Councillor;

- (d) 2.12 – Leadership – Members should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs. Members should make demonstrable efforts to reflect strong ethical principles across the whole organisation in particular support and adhere to all Council guidelines and codes.
20. In response Councillor Brierley reiterated that he was not acting in his capacity as a member of the Council when he drafted and distributed the leaflet, and in any case it could not be proven that he had in fact drafted and distributed it. He further added that:
- (a) he had not breached any parts of the Code of Conduct;
 - (b) this was part of a continuing pattern of personal attack and conspiracy against him by the Council; and
 - (c) the content of the leaflet was correct and he had not lied.
21. 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) Councillor Brierley 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) Councillor Brierley's conduct had fallen below the standards expected of a Councillor. He had been reckless in failing to properly research and ensure that the content of his leaflet was correct, and his actions were ill advised. This behaviour had not however been at a level so as to meet the threshold for contravention, and in this respect the Sub Committee determined that he had not breached:
 - (i) paragraph 3.1(b) of the Code because his behaviour did not amount to being abusive;
 - (ii) paragraph 5 of the Code because he had not acted in an intentionally dishonest or deceitful manner so as to be acting disreputably or which resulted in his office or the Council being brought into disrepute;
 - (iii) paragraph 6(a) of the Code because although the figures contained within the leaflet were misleading, his behaviour did not result in a measurable advantage or disadvantage being conferred upon himself or any other person so as to meet the threshold of being improper.
22. On account of no breach being found, the Sub Committee did not consider the application of sanctions, and further did not form the view that there were any other recommendations that they needed to make to the Council.