

## Standards Hearing (Ad Hoc) Sub Committee

### Notice of Decision

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Case reference:	Z38/119
Subject Member:	Councillor R. Brierley
Complainant:	Full Council
Sub Committee Members:	Councillor S. Keane (Chairman) Councillor M. Aldred Councillor S. Dewhurst
Legal Advisor:	Mr P. Hassett (Deputy Monitoring Officer)
Investigating officer	Mrs L. Fisher (Monitoring Officer)
Witnesses:	Mr D.G. – Member of Staff Mr I.M. - a specialist in forensic audio and video enhancement
Independent Person:	Mr K. Roberts
Corporate Governance Manager	Ms A. Harwood
Clerk to the Panel:	Mrs D. Adshead
Date of Hearing:	Friday 18 <sup>th</sup> March 2016

This was a hearing to consider whether Councillor R. Brierley had failed to comply with the Council's Code of Conduct.

The Sub Committee was convened under the Council's 'Arrangements for Dealing with Complaints about the Code of Conduct for Members' in accordance with the Localism Act 2011 for the determination of complaints that a Member may have breached the Council's Code of Conduct.

The Sub Committee was notified that Councillor R. Brierley had submitted a not fit to work note from his GP. The Sub Committee allowed 30 minutes after the advertised time before commencing the meeting to allow Councillor Brierley time to attend but he did not arrive. The Sub Committee decided to hear the matter in Councillor

Brierley's absence, in doing so the Sub Committee took into account the following matters;

- Councillor Brierley had been offered a number of opportunities to engage with the process
- the complaint had been outstanding for a considerable period
- Councillor Brierley had been aware of the date and time set for the hearing for a reasonable time.
- The investigating officer and the witnesses were in attendance and had prepared for the hearing to take place
- The hearing had already been postponed on a previous occasion at Councillor Brierley's request.
- Councillor Brierley had been informed that if he did not attend the reconvened hearing it would proceed in his absence

The complaint was submitted by Full Council. The allegation was that at a Full Council meeting held on 12<sup>th</sup> November 2014 Councillor Brierley made bullying and abusive comments to Councillor Murphy, namely, "Oh, I forgot it is you Mr Murphy you dickhead". The Sub Committee was informed that at the subsequent Full Council meeting held on 14<sup>th</sup> January 2015 Councillor Halliwell had made a request that Councillor Brierley apologise for the comments he had made at the previous meeting but that he had refused to do so. Full Council therefore resolved to make a formal complaint against Councillor Brierley in relation to his comments.

The Sub Committee had not received notification from Councillor Brierley as to whether he wanted the hearing to be in public despite the numerous opportunities he had been given to state his preference in advance of the hearing. The Sub Committee heard oral representations from the Investigating Officer and considered legal advice from the Deputy Monitoring Officer. The Sub Committee recognised the public interest in justice being seen to be done and agreed to hold the hearing in public.

The Sub Committee then heard oral and read written representations from the Investigating Officer Mrs L. Fisher and the witnesses, and the other documentation contained and annexed to the investigator's report, which set out details of the complaint against Councillor R. Brierley. The sub Committee also watched and listened to the video recording of the Full Council meeting held on 12<sup>th</sup> November 2014.

Councillor Brierley had declined the opportunity to be interviewed by the Investigating Officer. Documentation from him had however been included in the Investigation report. The Investigating Officer Mrs L Fisher informed the Sub Committee that on 17<sup>th</sup> December 2015 she arranged for a draft copy of her report to be hand delivered to Councillor Brierley to provide him with the opportunity for him to comment upon it before it was finalised. However, Councillor Brierley had ripped up the covering letter and refused to accept delivery of the draft report.

Mr D.G. informed the Sub Committee of how the Full Council meeting on 12 November 2014 had been video recorded by him. Mr I.M., a specialist in forensic audio and video enhancement, gave evidence as to how he enhanced the video

recording and was able to say in his expert opinion that Councillor Brierley did use the words "Oh, I forgot it is you Mr Murphy you dickhead" and not the words "Councillor Murphy, you again" as alleged by Councillor Brierley.

Following the submissions and subsequent discussions the Sub Committee agreed the following facts that Councillor Brierley:

- i. was at the 12<sup>th</sup> November 2014 Council meeting and commented "Oh, I forgot it is you Mr Murphy you dickhead";
- ii. at the Council meeting on the 14<sup>th</sup> January 2015 Councillor Halliwell made a request that Councillor Brierley apologise for the allegedly defamatory comments he made at the previous Council meeting;
- iii. refused to apologise and he disputed the allegation that he had made any defamatory comment as he had not been reported to the Council's Monitoring Officer for breaching the Members' Code of Conduct;
- iv. That Mr I.A. is a specialist in forensic audio and video enhancement. His expertise is contained within his statement.

The Sub Committee reached these findings on the balance of probabilities. In doing so the Sub Committee found the witnesses to be credible.

The Sub Committee considered that Councillor Brierley had been acting in his official capacity at the relevant time.

The Sub Committee then heard further evidence from the Investigating Officer as to whether the subject Member had breached the Members' Code of Conduct.

The Sub-Committee concluded that as a result of his actions Councillor Brierley had breached paragraph 3 (1) (b):

*"You must not bully or be abusive to any person"*

and paragraph 5 of the Council's Code of Conduct under the following article:

*"You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute."*

The Sub Committee considered that Councillor Brierley's comments would be considered abusive and disrespectful to most members of the public. To say them at a Council meeting and to disrespect the meeting and the Mayor is conduct which adversely affects public confidence in his ability to fulfil his councillor role. The words used and his conduct were capable of damaging the reputation of the Council thereby engaging paragraph 5 of the Members' Code of Conduct.

The Sub Committee having consulted with the Independent Person resolved the following actions to be taken:

- (1) The formal Decision Notice is to be published on the Council's website;
- (2) Details of the outcome to be published in the press and also in a newspaper circulating in the Hindley Green area;

- (3) That Councillor Brierley submit to the Monitoring Officer an unconditional written apology addressed to the Council members in a form acceptable to the Monitoring Officer
- (4) That should Councillor Brierley be re-elected as a Councillor following the completion of his term of office in May, then for a period of two years from the date of his re-election:
- All emails Councillor Brierley sends to Members or officers of the Council shall be managed before delivery to the Member or officer. They should only be forwarded on to the relevant Member or officer to respond to if they are respectful and courteous and do not contain abuse, rudeness or ridicule and are not considered to be harassing either in the content of the email or volume of emails he sends to the Member or officer. Members and officers are to respond to emails from Councillor Brierley to his Councillor's Council email address;
  - Having particular regard to the nature and pattern of bullying behaviour consistently shown by Councillor Brierley, any contact by him with Council officers should be restricted to emails, except for urgent matters requiring an immediate response, which may be made by telephone, but only to a named officer or officers supplied to him by the Council, from time to time;
  - Councillor Brierley's ability to support Brighter Borough applications for funding be removed.
- (5) Should Councillor Brierley comply with sanction (3) above then the two year length of the sanctions referred to in (4) above shall be reduced to one year.

The Sub Committee wished that it be recorded that Councillor Brierley refused to apologise for his abusive comment at the next Council meeting when given the opportunity to do so. He has consistently denied using the term "dickhead". This has meant that a formal investigation and hearing was necessary to establish his breaches of the Members' Code of Conduct. The resulting cost of investigating this complaint and holding this hearing is £9,000.

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### **Right of Appeal:**

Subject to judicial review or a decision of a Local Government Ombudsman, there is no right of appeal against the decision of the Standards Hearings (Ad Hoc) Sub Committee.