

Standards Hearing (Ad Hoc) Sub Committee

Notice of Decision

Case reference:	Z38/59
Subject Member:	Councillor R. Brierley
Complainant:	Member of the public
Sub Committee Members:	Councillor C. Rigby (Chairman) Councillor J. Prescott Councillor L. Holland
Legal Advisor:	Mr S. Goacher
Monitoring Officer:	Mr J. Mitchell
Investigating Officer	Mr M. Kenyon
Independent Person:	Mrs P. Gregory
Corporate Governance Manager	Mrs J. Horrocks
Clerk to the Panel:	Mr N. Higham
Date of Hearing:	Tuesday 21 st October 2014

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 Members' Code of Conduct in accordance with the Localism Act 2011 for the determination of complaints that a Member may have breached the Council's Members' Code of Conduct'.

The Sub Committee was notified by Councillor R. Brierley that neither he nor his representative Mr Franzen would be attending the hearing. 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;
- It had been at Councillor Brierley's request (through the Chair of the Standards Committee) that hearings against him take place separately, one per week;
- 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 was 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.

The Sub Committee had not received notification from the subject Member as to whether he wanted the hearing to be held in public despite the numerous opportunities he had been given to state his preference in advance of the hearing.

The Sub Committee sought the view of the Investigating Officer who considered that in this case discussion would involve details of individual(s), including not just the subject Member but other individuals referred to in the investigation report and the complainants' wishes not to reveal their details in public.

The Sub Committee having heard oral representation from the Investigating Officer and, following legal advice, agreed to hold the hearing in private on the grounds that paragraphs 1 and 2 of Schedule 12a to the Local Government Act 1972 apply (information relating to any individual or which is likely to reveal the identity of any individual).

Although the Sub Committee recognised the public interest in justice being seen to be done, having considered both sides of the argument, it felt that the greater public interest was to maintain the exemption which would ensure that any future complainant(s) and witnesses are not discouraged from bringing such complaints in the future.

The complaint was submitted by a couple who are residents in Hindley Green, Wigan. The complainants described a dispute between neighbours around parking issues and noise nuisance, in which Councillor Brierley has had some previous involvement in seeking solutions. Councillor Brierley had attended the complainants' neighbour's house at the same time as two refuse supervisors who had arrived, apparently in response to a neighbour complaining about the complainants' overfilling their bin, and despite the presence of the two refuse supervisors, Councillor Brierley became involved in a heated argument with one of the complainants.

The complainants felt that Councillor Brierley was disrespectful in the way he spoke to one of the complainants, both in inferring that he was the cause of the on going disagreements between neighbours, and in the angry exchange between them. They also felt that Councillor Brierley showed bias in siding with their neighbour, who they claimed was a friend of the Councillor. As one of the complainants was working for

the Council at the time, he stated he was aggrieved that the argument took place in front of his work colleagues. The complainants were also unhappy that on a separate occasion, Councillor Brierley had attended the place of work of one of the complainants and requested that his supervisor contact him as he wished to speak to him. They felt this was intrusive and was not work related so should not have been raised with the complainant's supervisor.

The Sub Committee then heard oral and read written representations from the Investigating Officer Mr M. Kenyon and considered the other documentation contained and annexed to the investigator's report, which set out details of the complaint against Councillor R. Brierley.

The Investigating Officer asked for the Sub Committee to note that Councillor Brierley had not denied the incidents had taken place or that he was acting in his capacity as a Councillor.

Following the submissions and subsequent discussions, the Sub Committee agreed the following facts in relation to the complaints against Councillor Brierley. That Councillor Brierley did:

- Visit the complainants' address;
- Engage in a heated argument with one of the complainants;
- Attend one of the complainant's place of work.

The Sub Committee considered the information provided by Councillor Brierley but as he had chosen not to attend was unable to hear oral evidence from him or question him.

Having considered the view of the Investigating Officer, the response from Councillor Brierley and the legal advice provided, the Sub Committee concluded that Councillor Brierley was acting in his capacity as a Councillor during both incidents. This was on the basis that his actions were all related to making representations on behalf of a resident; that he had attended one of the complainant's place of work in his official capacity, that he attended the complainants' home in response to a request from a neighbour which related to a council service and has not denied that he was acting in his official capacity.

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

The Sub-Committee concluded, after having consulted with the Independent Person and legal advisor, that Councillor Brierley's actions towards the complainants was not appropriate. As a result the majority decision was that Councillor Brierley had breached 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."

In reaching this conclusion the Sub Committee took into account the evidence that the complainants' child had been upset by the confrontation. The Sub Committee

also took into account that one of the complainants had accepted that he had contributed to the situation escalating into a heated argument. The Sub Committee, concluded that although provoked by the behaviour of the complainant, nevertheless Councillor Brierley's actions fell below that expected of a Wigan Councillor and as such felt that the public expect and should receive certain standards of behaviour from a Wigan Councillor. The Sub Committee felt that in becoming involved in a heated exchange in a public place and in raising his voice to one of the complainants', Councillor Brierley had brought his office and the Council into disrepute.

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) The decision on any further appropriate sanctions to be deferred until the conclusion of the final hearing of Councillor Brierley in November.

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.