

## Standards Hearing (Ad Hoc) Sub Committee

### Notice of Decision

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Case reference:	Z38/67
Subject Member:	Councillor R. Brierley
Complainant:	Mr T. Barton
Sub Committee Members:	Councillor C. Rigby (Chairman) Councillor L. Holland Councillor S. Dewhurst
Legal Advisor:	Mr S. Goacher
Monitoring Officer:	Mr J. Mitchell
Investigating Officer:	Mr M. Kenyon
Witness:	Mr T. Barton Mr D. Holt
Independent Person:	Mrs P. Gregory
Corporate Governance Manager	Mrs J. Horrocks
Clerk to the Panel:	Mr M. Williamson
Date of Hearing:	Wednesday 1 <sup>st</sup> 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 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.

Following a request from the subject Member the Sub Committee agreed to allow Mr P. Franzen to represent Councillor R. Brierley.

The complaint concerned allegations by made by Mr Trevor Barton, Chair of the Board of the Pelican Centre, Tyldesley, that on 11th September 2012, Councillor R. Brierley visited the centre where it is alleged he was aggressive and intimidatory initially towards a 17 year old female member of staff, and was both rude and aggressive towards the Deputy Business Manager of the centre.

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

The Sub Committee considered that in this case discussion would involve details of individual(s), including not just the subject Member but the witnesses and individuals referred to in the investigation report.

The Sub Committee noted the subject Member's wish to hear this in public but felt that they also had to consider the witnesses and others involved in the case. The Sub Committee recognised the public interest in justice being seen to be done but on balance felt that the greater public interest was to maintain the exemption so witnesses are not discouraged from bringing such complaints in the future.

As part of the preliminary procedural issues the subject Member informed the Sub Committee that he would be recording the hearing as an aid to help him with his disability. It was explained to him as a closed meeting the rules for recording the meeting were not the same as those for a public meeting and that under normal circumstances recordings are not permissible. However, given the purpose was to assist Councillor Brierley the Sub Committee offered that the hearing to be recorded by the Council and a copy of that recording would be made available to him, as soon as practicable after the hearing.

Councillor Brierley refused the offer stating he did not trust the Council.

In a further attempt to accommodate Councillor Brierley's needs the Sub Committee made the offer to permit him to be able to record the proceedings on his own device if he would be willing to sign a confidentiality agreement that the recording would be used only for his own purposes and the contents would not be divulged to any other party. Councillor Brierley refused this further offer stating he wanted to be able to give the recording to the press.

As a consequence and following legal advice, The Sub Committee decided to exclude Councillor Brierley from the hearing and to proceed in his absence on the basis that he refused to comply with the request that he turn his recording equipment off and this was disturbing the orderly conduct of the meeting. The Sub Committee was reluctant to take this course of action but felt that it had done everything it could to accommodate Councillor Brierley's needs and that by his refusal to accept the offer he had effectively excluded himself from the proceedings.

The Sub Committee also felt that they had to take into account the necessity for the complainant's complaint to be resolved, the length of time which had taken since the complaint had been made, Councillor Brierley's conduct during the course of the investigation in refusing to engage with the Investigating Officer or during the pre-hearing process and the fact that witnesses had already made arrangements to attend the hearing.

The Sub Committee then heard oral and written representations from the Investigating Officer Mr M. Kenyon and witnesses Mr T. Barton and Mr D. Holt which set out details of the complaint against Councillor R. Brierley

The witness Mr Barton provided background for the Pelican Centre and his involvement with it. Mr Barton described Councillor Brierley as disrespectful and insulting and that Councillor Brierley had said of him "..... he's just an ex-bobby... but what does he know about running a business and sport". The witness also expressed that he found it offensive for a serving Councillor to make insinuations that the Council had made improper payments to the organisation and therefore that the Board had acted improperly by soliciting or accepting such payments.

The Sub Committee then heard from Mr D. Holt who described the actions of Councillor Brierley on the evening of the incident. In particular he described how a young member of staff had come to him upset by the behaviour of a man who he later found to be Councillor Brierley who because of his aggressive and rude manner the member of staff asked him to deal with him.

Mr D Holt stated that he couldn't believe at the time he was a Councillor as his subsequent behaviour wasn't what he expected from a Councillor or in fact anyone who was a public servant and that he had found it very insulting and his demeanour bullying in nature.

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

- i. did visit the Pelican Centre on the evening of the incident;
- ii. had given the impression that he was acting on Council business;
- iii. displayed an aggressive and intimidatory approach towards staff members at the Pelican Centre, which given that there was no provocation or necessity for such an approach, is considered consistent with any definition of bullying;
- iv. had used a line and style of questioning that was disrespectful and insulting to staff and individual Board members of the Centre;
- v. had made insinuations of impropriety in the relationships between the Pelican Centre and Wigan Council.

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 considered that Councillor Brierley had been acting in his official capacity at the relevant time. They accepted the evidence that when asked by Mr Holt who he was he stated that he was a councillor. The Sub Committee believed

that Councillor Brierley was there to obtain information because he thought it was relevant to a similar issue in his ward. He was also seeking information about the actions of the Council and its relationship with the Pelican Centre. Taking all of this into account the Sub Committee considered that Councillor Brierley was acting in his capacity as a Councillor.

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 recognised Councillor Brierley's right to freedom of expression, particularly on political matters. However, it noted the evidence of Mr T. Barton that Councillors Brierley's comments and aggression were directed at volunteers providing services to the community in their own time for free and was not directed to political opponents. The Sub Committee believed that finding that Councillor Brierley had failed to comply with the code, was a justified and proportionate interference with his freedom of speech.

The Sub Committee considered that there had not been a failure to comply with paragraph 6 of the Code which states:

*“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”*

The Sub Committee felt that there was insufficient evidence to support the assertion that Councillor Brierley was seeking to obtain information to support a private business venture. Whilst he had written to Mr T. Barton stating that he was at the pool on private business the Sub Committee did not feel that this was sufficient to prove that he was seeking the information to support a private business venture.

The Independent Person asked that as part of the Decision Notice it be recorded that she considered that the Sub Committee had given Councillor Brierley every opportunity to take part in the hearing but that he had refused to comply with the decisions made by the Sub Committee leaving them with no alternative but to exclude him reluctantly from the proceedings.

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

- (1) the decision on appropriate sanctions to be deferred until the final hearing of Councillor Brierley later this month;

- (2) the formal Decision Notice of the outcome of the hearing is to be published on the Council's website and details of the outcome to be published in the press and also in a newspaper circulating in the Hindley area.

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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.