

Standards Hearing (Ad Hoc) Sub Committee

Notice of Decision

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| Case reference: | Z38/68 |
| Subject Member: | Councillor E. McGurrin |
| Complainant: | Mr A. Foster |
| Sub Committee Members: | Councillor S. Keane (Chairman) Councillor P. Dewhurst Councillor L. Holland |
| Deputy Monitoring Officer: | Mr P. Hassett |
| Investigating Officer | Mr P. Hogg. |
| Independent Person: | Mr K. Roberts |
| Corporate Governance Manager | Mrs J. Horrocks |
| Clerk to the Panel: | Mrs D. Adshead |
| Date of Hearing: | Wednesday 5 th November 2014 |

This was a hearing to consider whether Councillor E. McGurrin 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 had received no notification from the former Councillor in regard to attending the hearing. The Sub Committee decided to hear the matter in ex Councillor McGurrin's absence. In doing so the Sub Committee took into account the following matters:

- Councillor McGurrin had been offered a number of opportunities to engage with the process;
- The complaint had been outstanding for a considerable period;
- Ms. McGurrin had been notified 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 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).

The Sub Committee had not received notification from the subject Member as to whether she wanted the hearing to be held in public despite the opportunities she had been given to state her 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 the patient, the patient's family, hospital staff and individuals referred to in the investigation report.

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 Mr Foster, CEO Wrightington, Wigan and Leigh NHS Trust (WWL), who alleged that at 11:30 am on Saturday 28th July 2012 Councillor McGurrin attended a meeting at the Royal Albert Edward Infirmary (RAEI) with hospital staff and a patient's parent at which she went far beyond her Councillor remit and made comments that were completely untrue and falsely suggested that she had the ability and power to intervene in assisting the patient.

The Sub Committee then heard oral and read written representations from the Investigating Officer Mr P. Hogg and considered the other documentation contained and annexed to the investigator's report, which set out details of the complaint against former Councillor E McGurrin.

The Investigating officer described how prior to an earlier incident Councillor McGurrin had contacted Councillor Brierley by text and email requesting his involvement in representing the family.

Councillor McGurrin also sent a further email to another Councillor in Hindley ward and to the patients mother, courtesy copied to three health contacts and blind copied to Councillor Brierley, requesting their intervention and to come to a meeting at 10am on Saturday 28th July.

Councillors McGurrin and Brierley along with the patient's parent attended a meeting at the RAEI at 11:30 am on Saturday 28th July 2012 with the PCT's acute medical consultant during which Mr Foster considers that Councillor McGurrin went way beyond her remit.

Mr Foster considered that although the statements may have been well intentioned they were almost completely untrue and falsely suggested that the Councillor had the ability and power to intervene in assisting the patient.

To support his concerns Mr Foster detailed internal Trust notes of the meeting attended by Councillor McGurrin. The document showed that the two incidents did take place and were attended by the Councillor.

The typed meeting notes identified Councillor McGurrin as a Councillor and attributed a number of specific comments to her.

On 10th November, Councillor McGurrin responded to the complaint, disagreeing with the accuracy of the Trust meeting notes. Councillor McGurrin further contended that she considered she had acted professionally and within her remit as a Councillor and had not stated that she would or could provide funds for anything.

A joint response to the draft report was received from Councillors McGurrin and Brierley on 13th February 2013 which was fully considered by the Investigating officer but did not change his views on the events portrayed in the initial letter of complaint from Mr Foster.

The Investigating Officer explained that at this stage it had been established and was detailed in the draft report that the patient was the son of a friend of Councillor McGurrin and accordingly Councillor McGurrin had a personal interest in the issue. Councillor McGurrin then changed her approach (in this later response), to state that she was actually acting in a personal capacity and not as a Councillor. This is different to the previous statement where she considered she had acted within her remit as a Councillor.

The Sub Committee considered the information provided by Councillor McGurrin but as she had chosen not to attend was unable to hear oral evidence or question her.

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

1. Councillor McGurrin was contacted by the patients family for support
2. Councillor McGurrin was known by the patients family in a personal capacity
3. Councillor McGurrin did contact Councillor Brierley for his support
4. At 11.30 am on Saturday 28th July 2012 both Councillors McGurrin and Brierley attended the Medical Assessment Unit (MAU) with the patient's mother and the Senior Manager On-Call, Consultant, and MAU Sister
5. The meeting had been requested by the patients mother to discuss concerns relating to the care of her son.

6. Wrightington, Wigan and Leigh (WWL) staff made comprehensive notes of the meeting that detail the conversations that resulted in the issues of concern
7. During the meeting Councillor McGurrin made several general statements about Neurological facilities at the RAEI and also specific statements about the patient's needs, the most inappropriate being, viz.:-
 - a. *WWL should have a neurology ward. Commissioners would support the opening of a neurology ward in Wigan;*
 - b. *A meeting was going ahead with the DCEO, Senior Commissioners and Senior PCT Lead for dealing with complaints;*
 - c. *The councillor would sort out all the funding required to meet the patient's needs;*
 - d. *The councillor would put performance indicators in place to monitor the Trust's performance;*

Having considered the view of the Investigating Officer, the response from Councillor McGurrin and the legal advice provided, the Sub Committee concluded that Councillor McGurrin was acting in her capacity as a Councillor during the incident. This was on the basis that her actions were all related to making representations on behalf of a resident. Councillor McGurrin had also stated in her initial reply that "*I strongly feel that I have acted professionally and within my remit as a councillor*". Councillor McGurrin had also made repeated references attributed to her covering issues alluded to that could not have been linked to someone acting in a private capacity and were attributed to her by the Trust as a Councillor.

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, that Councillor McGurrin's actions in the meeting towards professional NHS staff, did satisfy the threshold of intimidation, perceived influence and undermined the Trust officers. As a result, Councillor McGurrin had breached the following paragraphs of the Council's Code of Conduct under the following articles:

Paragraph 3.1 (b): You must not bully or be abusive to any person;

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

Paragraph 6 (a): "You must not use or attempt to use your position as a member improperly to confer or to secure for yourself or any other person, an advantage or disadvantage..."

In reaching the decision the Sub Committee recognised Councillor McGurrin's right to freedom of expression, however, it noted that Councillor McGurrin's comments and accusations were directed not to a political opponent but towards professional NHS staff, who would be unable to respond in the same fashion as a fellow Councillor would be able to

do. The Sub Committee, after considering legal advice, believed that finding ex Councillor McGurrin had failed to comply with the code, was a justified and proportionate interference with her freedom of speech.

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

1. The former Councillor submit a written letter of apology to the hospital trust;
2. If the Councillor had still been a Member of the Council, the Panel would have directed that she attend appropriate training to address the issues raised in the hearing;
3. The matter be reported to the Standards Committee and Full Council with a view to the former Councillor being censured;
4. The decision be publicised on the Council's website and in a newspaper circulating in the Councillor's former ward;
5. Should the former Member be re-elected to the Council the Monitoring Officer be authorised to report the matter back to the Panel if the former Councillor has failed to comply with these sanctions.

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.