

## Standards Hearing (Ad Hoc) Sub Committee

### Notice of Decision

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Case reference:	Z38/68
Subject Member:	Councillor R. Brierley
Complainant:	Mr A. Foster
Sub Committee Members:	Councillor C. Rigby (Chairman) Councillor E. Smethurst Councillor L. Holland
Legal Advisor:	Mr S. Goacher
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:	Ms K. East
Date of Hearing:	Wednesday 15th 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 or 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 complaint concerned a formal complaint submitted by Mr Foster, CEO Wrightington, Wigan and Leigh NHS Trust (WWL), that Councillor Brierley had attended several wards at the Royal Albert Edward Infirmary (RAEI) unannounced in the early hours (01:30 am) of Saturday 28<sup>th</sup> July 2012 demanding confidential information about the treatment of a patient. That at 11:30 am (same day) Councillors Brierley and McGurrin attended a meeting at the RAEI with hospital staff and a patient's parent at which they went far beyond their Councillor remit and made comments that were completely untrue and falsely suggested that they had the ability and power to intervene in assisting the patient.

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 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 the patient, the patient's family, hospital staff and individuals referred to in the investigation report. He also stated that there was also a forthcoming hearing against ex Councillor McGurrin in relation to the same complaint and holding it in public would potentially prejudice that hearing.

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 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 Councillor R. Brierley.

The Investigating Officer explained that a separate hearing to consider the actions of Councillor McGurrin in respect of this complaint is scheduled for 5<sup>th</sup> November, however the actions of the Councillors are not mutually exclusive and the complaint (in respect of the later incident) refers to the joint actions of the Councillors and so it is necessary to consider some of Councillor McGurrin's actions as part of this hearing.

The Investigating Officer provided details of the contact that had occurred, three hours prior to the initial incident, between Councillor McGurrin and Councillor Brierley in which she had asked for his urgent assistance which led to incident one.

Councillor Brierley then attended the Medical Assessment Unit at the RAEI at 01:30 am on Saturday 28<sup>th</sup> July and repeatedly demanded information about the condition and treatment of the patient, refusing to take no for an answer.

This was followed by a second incident whereby Councillors Brierley and McGurrin, with the patient's parent, attended a meeting at the RAEI at 11:30am the same day with the PCT's relevant medical staff during which Mr Foster considers the Councillors went beyond their remit and made comments that were completely untrue and falsely suggested that they had the ability and power to intervene in assisting the patient.

The evidence from the investigation showed that the two incidents did take place and were attended by the respective Councillors and authenticated by hospital staff.

Councillor Brierley had subsequently, in his response to the complaint, confirmed that he had attended the RAEI in the early hours of the 28<sup>th</sup> July as detailed but this was at the request of ex Councillor McGurrin and the patient's parent. Councillor Brierley further stated that he confirmed the general factual content of the Trust meeting notes in respect of the subsequent meeting, but that he contributed little to the discussions and had made no promises or offers of any kind.

The Investigating Officer asked for the Sub Committee to note that Councillor Brierley had not denied the two 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:

#### Incident One

- At approximately 1:30 am on Saturday 28<sup>th</sup> July 2012 Councillor Brierley attended (unannounced) the Intensive Care Unit at RAEI enquiring about a patient. Councillor Brierley was directed to the Medical Assessment Unit (MAU) where the patient was being treated. (This was contrary to hospital procedures and Councillor Brierley should have been asked to leave).

- At the MAU Councillor Brierley made enquiries as to the condition and treatment of the patient allegedly at the request of the patient's mother. Councillor Brierley incorrectly believed that the patient was dying, and needed to be transferred to Hope Hospital.
- Councillor Brierley was refused (correctly) any patient information by the Staff Nurse who called the Bed Manager to the MAU to deal with the Councillor.
- Councillor Brierley would not accept the staff's decision not to provide him with patient information and repeatedly asked them for it.
- After failing to contact the patient's mother (by phone) Councillor Brierley was asked to leave and left the MAU at 2:10 am.
- The on-call Manager subsequently contacted the patient's father and was advised that they had requested Cllr Brierley's assistance.
- Following the incident, security officers were based at the MAU overnight in case Councillor Brierley returned.
- The unannounced visit of Councillor Brierley, especially during the early hours of the morning, was unacceptable and inappropriate. Councillor Brierley's behaviour was not viewed by any staff as threatening or aggressive in manner, however, the timing of his unannounced arrival and persistent efforts to gain information from two members of staff resulted in staff feeling uncomfortable, intimidated and distracted by the situation in which they found themselves.

### Incident Two

- At 11.30 am on Saturday 28<sup>th</sup> July Councillors Brierley and McGurrin attended the MAU with the patient's mother and the Senior Manager On-Call, Consultant, and MAU Sister.
- The meeting had apparently been requested by the patient's mother to discuss her and the Councillors' concerns relating to the care of the patient.
- During the meeting the Councillors made several general statements about Neurological facilities at the RAEI and also specific statements about the patient's needs.

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, albeit one who did not live in Councillor Brierley's ward. Councillor Brierley

described himself as a Councillor in all of his interactions with the hospital staff 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, that Councillor Brierley's actions in incident one towards professional NHS staff was not appropriate and had coloured their judgement of the Councillor and the Council in a negative fashion. As a result 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 fact that Councillor Brierley had attended the hospital in the early hours of the morning: he had made no attempt to contact the hospital in advance to explain that he would be attending and why: he had not obtained any clear authority to attend and represent the patient, but nevertheless sought to obtain confidential medical records and persisted in requesting such records, even when his request had correctly been refused. His behaviour was such that the most senior manager was called to deal with him and that manager was then so concerned that they arranged for security to be posted on the ward where the patient was for the remainder of the night.

Following further discussion, and having sought legal advice, the Sub Committee considered that, given the finding that "Councillor Brierley's behaviour was not viewed by any staff as threatening or aggressive in manner," without further direct evidence in relation to his actions, comments or demeanour there was insufficient evidence to conclude that Councillor Brierley's behaviour amounted to bullying. Therefore, the Sub Committee concluded that it could not find that Councillor Brierley had failed to comply with paragraph 3(1) (b) of the Code.

In regard to the second incident, having discussed the evidence provided and reflected on the legal advice, the Sub Committee, having consulted with the Independent Person, concluded that Councillor Brierley had not breached the Code of Conduct for Members during that incident. The Sub Committee came to this conclusion because the evidence from the NHS Trust, the Investigating Officer and Councillor Brierley himself, was that he had not made the comments that the Trust considered to be inappropriate. In reaching this conclusion, the Sub Committee did not reach any conclusions in relation to the conduct of Councillor McGurrin.

In reaching their conclusions the Sub Committee consulted with the Independent Person.

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.

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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.