

Standards Hearing (Ad Hoc) Sub Committee

Notice of Decision

Case reference:	Z38/84
Subject Member:	Councillor R. Brierley
Complainant:	Mrs. A. McKenzie-Folan
Sub Committee Members:	Councillor SS. Keane (Chairman) Councillor E. Smethurst Councillor J. Prescott
Legal Advisor:	Mr S. Goacher
Deputy Monitoring Officer:	Mr P. Hassett
Investigating Officer	Mr P. Hogg.
Witness:	Member of staff
Independent Person:	Mrs P. Gregory
Corporate Governance Manager	Mrs J. Horrocks
Clerk to the Panel:	Mr M. Williamson
Date of Hearing:	Tuesday 7 th 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.

The Sub Committee was notified by Councillor R. Brierley that he was unable to attend the hearing. The Sub Committee was advised that Councillor Brierley had

indicated that he would be represented at the hearing. The Sub Committee allowed 20 minutes after the advertised time before commencing the meeting to allow Councillor Brierley's representative 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
- It had been at Councillor Brierley's request (through the Chair of the Standards Committee) that hearings against him to take place separately
- 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 witness 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.

The complaint concerned a formal complaint submitted by the Council's Director for Customer Transformation covering the alleged intimidating behaviour of Councillor Brierley towards a member of staff. The complaint was submitted following the submission of a Council Incident Report Form by the officer that she and her daughter had been intimidated by Councillor Brierley, whilst putting her dogs into the car after having been for a walk in Hindley Green on the evening of 18th June 2013.

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 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 had not received notification from the subject Member 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 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 witness and individuals referred to in the investigation report. However, they asked the Investigating Officer to confirm the views of the witness, before making their final decision.

The Investigating Officer reported back to the Sub Committee that the witness raised concerns about the potential negative effect of the hearing on her role as an officer of the Council and the impact of the publicity on her family, in particular the possible distress to her daughter and confirmed that her preference was for the hearing to be held in private.

Although the Sub Committee recognised the public interest in justice being seen to be done having considered both sides of the argument, and the view of the witness,

it felt that the greater public interest was to maintain the exemption so 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 the witness, and the other documentation contained and annexed to the investigator's report, which set out details of the complaint against Councillor R. Brierley.

The witness provided a detailed description of the incident. In particular, how on the 18th June 2013, Councillor R. Brierley had pulled up alongside her car and asked if she had seen what was happening to Haigh Hall. Reluctant to engage in questions about the Council or work she had responded with 'no' answers. The witness explained that Councillor Brierley then became increasingly more annoyed finally raising his voice and pointing a finger at her stating that she would soon be working for him. The witness explained how her daughter was visibly shaken by the incident and very concerned that her mother was expected to deal with Councillors like that on a daily basis.

The witness explained that following her daughter's description of the event to her husband he was equally concerned particularly as she had been recently diagnosed with a potentially serious health condition. Although she managed to persuade her husband from going and challenging Councillor Brierley about his behaviour, she did send a text to her line manager with an outline of what had occurred.

The witness described that on the following day her line manager explained that the Council's Senior Management Team had a zero tolerance approach on bullying and would encourage and support any member of staff to come forward following such incidents and asked that she put in a statement about what happened. The witness then completed the Council's Incident Report Form and sent it to the Council's Director for Customer Transformation.

The Investigating Officer informed the panel Members that Councillor Brierley subsequently stated that at the time of the incident he was "*not on Councillor duties*" and that in fact on the day in question he was actually in the Lakes on his motor bike and out all day only arriving back at 10:00 pm. Councillor Brierley also stated that one of the issues he allegedly referred to (Haigh Hall) with the member of staff was only released to the public on the 28th June, i.e. 10 days after the alleged incident.

The Investigating Officer also informed the Sub Committee that Councillor Brierley had also submitted a statement from a person who resides with him to support his contention that on the day of the alleged incident he arrived home at 10:00 pm from a motorbike ride in the Lakes. This statement was produced on the same day as Councillor Brierley's own statement (5 months after the event).

The Investigating Officer informed the Sub Committee that Council records clearly detail that Councillor Brierley arranged and attended a site meeting with a Council Officer and residents in Hindley Green at 1:00 pm on the day in question (18th June 2013).

The Investigating Officer described that in addition to the actual incident that Councillor Brierley had also issued, what he considered to be related documentation, accusing staff of collusion to all members of the Standards Committee, certain member "colleagues" and also a blind copy to the press. The Investigating Officer explained that no evidence of collusion had been found and that these incidents could themselves be considered was in itself a breach of the Code of Conduct.

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

- i. did have a site visit with a Senior Technical Officer Safer Environment and residents on the 18th June at around 1pm;
- ii. on the evening of 18th June 2013, pulled up in his car alongside the member of staff and her daughter;
- iii. told the member of staff about an article in the papers regarding Haigh Hall;
- iv. told the member of staff Labour would be out of the next election and that she would be working for him;
- v. subjected the member of staff and her daughter to intimidatory behaviour and their perception of the Council and its members is now tainted by that experience.

The Sub Committee reached these findings on the balance of probabilities. In doing so the Sub Committee found the witness to be credible. The Sub Committee considered that the witness contacted her line manager immediately after the incident and wrote up her account the next day. The sub-committee considered that this supported the witnesses version of events and her reliability. The Sub Committee considered the information provided by Councillor Brierley but as he had chosen not to attend were unable to hear oral evidence from him or question him. The Sub Committee considered that there were inconsistencies in the information provided by Councillor Brierley. He had initially indicated that he was not acting as a councillor but had then stated that the incident could not have taken place on the day alleged. He had stated that one reason for this was because the information relating to Haigh Hall had not been published on 18 June 2013 but the Sub Committee was provided with a copy of the front page of the local newspaper for that day which clearly showed the story. Councillor Brierley had also stated that he had been away in the lakes and his email suggested that he had been away all day. However, he had attended a site visit that afternoon.

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

The Investigating Officer advised the Sub Committee that the only engagement that took place between the witness and Councillor Brierley was as between an Elected Member, and an employee of the Council. The comments alleged to have been made by Councillor Brierley were in relation to Council business and her employment at Wigan Council. As such it is difficult to reconcile this exchange as anything other than an Elected Member speaking to a person who he knew to be a Council employee. The content of the exchange and the associated employment threats could not have been delivered in a private capacity therefore it is reasonable to conclude that Councillor Brierley must have been acting in his official capacity as a Councillor.

Having considered the view of the Investigating officer and legal advice the Sub Committee considered that Councillor Brierley was acting in his capacity as a Councillor.

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 the impact of Councillor Brierley's actions on the witness and her family and accepted her evidence that it diminished their view of Councillor Brierley and of the Council. His behaviour was wholly unjustified and inappropriate and as a result brought his office and the Council into disrepute.

The Sub Committee also noted the impact that the incident has had on the witness' life and behaviour, she no longer walks her dog in the same place and always does so with her husband and not on her own or with her daughter.

The Sub Committee recognised Councillor Brierley's right to freedom of expression, particularly on political matters. However, it noted the evidence of the witness that Councillor Brierley's comments and aggression were directed not to a political opponent but towards a member of staff in their own time, who as an officer is 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 that Councillor Brierley had failed to comply with the code, was a justified and proportionate interference with his freedom of speech.

Following legal advice, the Sub Committee considered that the additional issues, in relation to Councillor Brierley issuing confidential information in respect of this complaint to all Members of the Standards Committee, other Members of the Council, and the press but felt it inappropriate to reach any finding upon at this time.

The Sub Committee felt that there where further facts are discovered during the course of the investigation which reveal potential breaches of the Code of Conduct that those are put to the Monitoring Officer to give him the opportunity to decide whether the scope of the investigation should be broadened to cover those further allegations and, if so, advise the subject Member accordingly.

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

- (1) The formal Decision Notice and the Investigator's report (minus the appendices) to be redacted as considered necessary (to remove personal; information) by the Monitoring Officer, 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 area;
- (3) The decision on any further appropriate sanctions to be deferred until 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.