

Standards Hearing (Ad Hoc) Sub Committee

Notice of Decision

Case reference:	Z38/85
Subject Member:	Councillor R. Brierley
Complainant:	Mr D. Hope
Sub Committee Members:	Councillor S. Keane (Chairman) Councillor E. Smethurst Councillor L. Smethurst
Legal Advisor:	Mr S. Goacher
Monitoring Officer:	Mr J. Mitchell
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:	Wednesday 29th 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 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 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 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. 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 that her preference was for the hearing to be held in private.

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 also ensure that any future complainant(s) and witnesses are not discouraged from bringing such complaints in the future.

The complaint was submitted on 27th June 2013 by Mr D. Hope, GMB Union Representative via Mrs A. McKenzie Folan, Director Customer Transformation about the alleged intimidating behaviour of Councillor Brierley towards a Resources Directorate Officer. The complaint was submitted following the submission of a Council Incident Report Form by the officer that she had been subjected to email abuse by Councillor Brierley. This issue culminated when Councillor Brierley issued an email on 13th June 2013 to the Chief Executive, Ms D. Hall, copied to all Members of the Council, including the Director Economy and Skills, and the Assistant Director

Infrastructure, seeking the officer's suspension because of her alleged attitude towards him.

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 explained how it is part of her role as a Council Officer to provide various services, advice and guidance to Councillors. The witness described how she had worked closely over a number of years with Councillor Brierley to help support him as a Councillor which made his actions and his subsequent refusal to deal with her all the more upsetting.

The witness described that it all started following the responsibility for processing Brighter Borough work having transferred to Democratic Services in 2013. All Members were given information on how the new system operated and offered training sessions. However, Councillor Brierley only stopped fleetingly at one of the sessions and declined subsequent offers for one to one training on the new system.

Unfortunately, Councillor Brierley did not follow the process whereby a Councillor completes an on line form detailing what the funds would be used for and then waiting for the approval and sign off in accordance with the scheme before spending it. Instead he sent an email for work already completed requesting £1,322.00 from his Brighter Borough funds.

The witness then sought advice from the Chief Executive and Monitoring Officer. The view was that in relation to the particular works in question for dropped kerbs, Councillor Brierley be asked to pay for the works out of his private allowance or ask the associated residents for the money.

The witness described how she had explained to Councillor Brierley both via email and verbally, that the Brighter Borough Funds would not cover payments which benefitted only a small number of private householders, as this would not meet the criteria, specifically that the scheme improves the environment and benefits the wider community within the Councillor's ward. The witness also explained to him that this had also been the case under the old system. The witness described how in the email she explained the options available for Councillor Brierley to pay back the money.

The witness then provided details of a series of emails that took place between herself and Councillor Brierley in which he strongly challenged the decision and her interpretation of the rules (the Investigating Officer explained that some of these had also been blind copied to the press).

The witness described how following notification from another Councillor she was made aware of an email sent from Councillor Brierley to the Chief Executive, senior officers and all Members of the Council asking for her to be suspended pending a full investigation of her actions. This was followed by a number of other Councillors contacting her disagreeing with his approach and offering their support.

The witness described how this had left her feeling initially embarrassed that so many people had been sent the email; then threatened by this approach as she felt Councillor Brierley was attempting to undermine her position with her colleagues and Members. She explained how, as someone who takes her responsibilities seriously, took this as a personal attack and was upset that Councillor Brierley would challenge her integrity in such a fashion.

She described how his behaviour over the period of months leading to this final email had left her feeling drained and embarrassed. She then spoke to her Union Representative and completed a Council incident form which led to the issue coming before the Council's Monitoring Officer.

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:

1. Attempt to influence the witness and other officers to process Brighter Borough Payments for work that had already been completed, and that also failed to meet scheme criteria;
2. Submit repeated requests for the same information from the witness which included:
 - a. Emails refuting information being provided by the witness and other Democratic Services officers;
 - b. Emails bringing Places Directorate and other senior officers into the discussions;
 - c. Emails refuting information being provided and questioning why replies came from the witness as opposed to the Monitoring Officer
 - d. Having blind copied certain of the emails to the press and a third party;
3. Submit an email to the Chief Executive, all Councillors and a number of senior officers asking for the witness to be suspended;
4. Leave the witness feeling embarrassed, threatened, her position undermined and integrity challenged by doing so;
5. Although aware of the correct procedure to follow when submitting a complaint about an officer, choose to raise his concerns, with all Members of the Council.

The Sub Committee then considered whether 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 emails and interactions by Councillor Brierley were in relation to Council business and the witness' role at Wigan Council. The Investigating Officer considered that 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 emails and the associated employment threats could not have been delivered in a private capacity therefore it is reasonable to state 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 and the Council Protocol on Member/Officer Relations.

The Sub-Committee concluded that as a result of his actions Councillor Brierley had failed to comply with the following paragraphs:

Members Code of Conduct:

3.1 You must not:

- (b) bully or be abusive to any person;
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Council.

6. You:

- (b) must, when using or authorising the use by others of the resources of your authority:
 - (i) act in accordance with the Council's reasonable requirements.

Protocol on Member/Officer Relations:

4.1 For the effective conduct of Council business there must be mutual respect, trust and courtesy in all meetings and contacts, both formal and informal, between Members and Officers. This plays a very important part in the Council's reputation and how it is seen in public. It is very important that both Members and Officers remember their respective obligations to maintain the Council's reputation. A Member should not raise matters relating to the conduct or capability of an Officer at meetings held in public or before the press. This is a long-standing tradition in public service as an Officer has no means of responding to such criticisms in public. The Officer may however have grounds to make a complaint to the Monitoring Officer if the Member's conduct breached the Member's Code of Conduct. The Officer may also have grounds to bring a civil action against the member for defamation of character in such circumstances. If a Member feels they have not been treated with proper respect, courtesy or has any concern about the conduct or capability of an Officer, and fails to resolve it through direct discussion with the Officer, they should raise the matter with the Officer's line manager in accordance with the procedure set out in paragraph 5.1 below. Any action taken against an Officer in respect of a complaint will be in accordance with the provisions of the Council's Disciplinary Rules and Procedures.

- 6.5 The information sought by a Member should only be provided by the respective Service as long as it is within the limits of the Service's resources. For their part, Members should seek to act reasonably in the number and content of the requests they make. Unnecessarily frequent and excessive requests can constitute an inappropriate and wasteful use of Council resources.

The Sub Committee considered that although his conduct was not acceptable, there was not enough evidence to show his behaviour had been an attempt to use his position as an Elected Member improperly to confer or secure an advantage for other persons or for himself.

The Sub Committee recognised Councillor Brierley's right to freedom of expression, however, it noted that Councillor Brierley's comments and aggression were directed not to a political opponent but towards a member of staff, 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.

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, 4th November 2014.

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.