

Standards Hearing (Ad Hoc) Sub Committee

Notice of Decision

Case reference:	Z38/99
Subject Member:	Councillor R. Brierley
Complainant:	Mrs L. O'Halloran
Sub Committee Members:	Councillor C. Rigby (Chairman) Councillor J. Prescott Councillor S. Dewhurst
Legal Advisor:	Mr S. Goacher
Monitoring Officer:	Mr J. Mitchell
Investigating Officer	Mr P. Hogg.
Witnesses:	Members of staff
Independent Person:	Mrs P. Gregory
Corporate Governance Manager	Mrs J. Horrocks
Clerk to the Panel:	Mr M. Williamson
Date of Hearing:	Tuesday 4 th November 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. The Investigating Officer informed the Sub Committee that both witnesses had raised concerns about the potential negative effect of the hearing on their roles as officers of the Council and that their 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.

A formal complaint was submitted on 13th December 2013 by the Assistant Director – Customer Services about the alleged intimidating behaviour of Councillor Brierley to a Resources Directorate officer on three separate occasions.

The formal complaint was submitted following the officer raising his concerns with management about the initial conduct of Councillor Brierley on 8th November 2013. Councillor Brierley subsequently contacted the member of staff about the incident on both the 13th November and 9th December 2013 suggesting that he should withdraw his complaint in respect of the initial incident.

Councillor Brierley made further contact with the officer on 24th December 2013 (after the formal complaint was issued to Councillor Brierley) at which time he provided a compact disc containing his covert verbal recording of the initial incident of 8th November 2013. At this time Councillor Brierley asked that after listening to the recording, the officer may reconsider any complaints against him.

On 6th January 2014 the Monitoring Officer contacted Councillor Brierley stating that his subsequent actions would be considered as part of the initial complaint investigations and drew Councillor Brierley's attention to the sections of the Members Code of Conduct covering intimidation.

The Sub Committee then heard oral and read written representations from the Investigating Officer Mr P. Hogg and witnesses, and the other documentation contained and annexed to the investigator's report, which set out details of the complaint against Councillor R. Brierley. The Sub Committee also listened to the recording which Councillor Brierley had made of the events of 8th November 2013.

The first witness was the officer involved directly in the initial incident. He explained how it is his role as a Council Officer to provide various services, advice and guidance to customers and to Councillors at Council receptions. The officer described that he had felt the initial situation where Councillor Brierley had tailgated Councillor McGurrian into the building ostensibly to use the toilet then subsequently accused him of being politically biased because he hadn't given him a pass had been a deliberate 'set-up' by the Councillor.

The officer explained that as he felt his position had been deliberately compromised he reported the incident to management. The officer then described how Councillor Brierley's subsequent actions whereby he attempted to pressurise him into rescinding his complaint left him feeling threatened, concerned and worried that he had done something wrong and unsure of where the complaint was going and how it might impact on him and his position.

He explained that he was not aware of being recorded at the time of the incident as it is not normal practice for anyone to record a simple request to go to the toilet. The officer described how on being presented with the recording on Christmas Eve it left him feeling vulnerable and anxious. He described how it placed worries and doubts in his mind about his actions at the time of the initial incident which had occurred several weeks before.

The second witness, Assistant Director – Customer Services, explained that she felt that the behaviour by Councillor Brierley towards a junior member of her staff was not acceptable behaviour of a Councillor hence reporting it to the Monitoring Officer. She was particularly concerned by the Councillor's direct approach to the officer and how Councillor Brierley had deliberately sought to undermine and threaten him. She considered that it was a deliberate and cruel action by Councillor Brierley to have given the officer his covert recording of the incident on Christmas Eve knowing that this would cause the officer to worry over the holiday period.

The Assistant Director – Customer Services, explained that because of his actions she had told staff to continue to deal with Councillor Brierley in the normal way but to be vigilant and that if they have any concerns to contact their Line Manager for advice and support in dealing with him.

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

1. On the 8th November 2013 Councillor E. McGurrian was given a pass by the Council officer in order to gain access to the Cabinet Office to attend an alleged meeting;
2. Councillor Brierley followed Councillor E. McGurrian upstairs stating he was looking for the toilet;
3. On Councillor Brierley's return he asked the officer why he had given Councillor E. McGurrian a pass that gave her access to the Council offices;
4. The officer explained to Councillor Brierley he had been told by Councillor E. McGurrian she had a meeting in the cabinet office and took her at her word and as he had a spare pass left by a contractor he had given her the pass;

5. Councillor Brierley accused the officer of showing political bias towards Labour Councillors by allowing them unrestricted access to the building;
6. The officer explained he may have been at fault to give Councillor McGurrin access but that this had been regardless of political party.
7. Councillor Brierley apologized and assured the officer that he wouldn't be making an issue and would not be taking it further;
8. On the 8th November the Chief Executive emailed Councillor Brierley expressing concerns at his attempts to access the Town Hall and of his accusation of political bias by the officer;
9. On 13th November Councillor Brierley telephoned the officer to apologise and asked him to reconsider his complaint concerned that he may lose his Brighter Borough funds;
10. On 9th December Councillor Brierley made further contact by telephone:
 - a. asking the officer whether he had withdrawn his complaint against him;
 - b. querying if the officer felt threatened by him during his visit to the Town Hall;
 - c. stating the issue of political bias had been raised by the officer;
11. On 24th December:
 - i. Councillor Brierley handed a disc containing verbal recording of the initial incident to the officer;
 - ii. Councillor Brierley told the officer that he had sought advice from a Solicitor who recommended he provide the officer a copy of the conversation;
 - iii. Councillor Brierley stated that after listening to it, the officer may reconsider any complaints made against him;
12. On 6th January Mr Mitchell emailed Councillor Brierley his concerns about his actions in suggesting the officer should reconsider continuing with his complaint and that his actions would be considered as part of the complaint investigation;
13. There had been communications between Councillor Brierley and senior Council Officers concerning his desire to record conversations and Council meetings due to his disability;
14. There is no evidence of any agreement being made to allow Councillor Brierley recording of conversations or meetings;
15. Councillor Brierley covertly recorded the visit and planned to do so;
16. On 13th December Councillor Brierley submitted a complaint of alleged gross misconduct unjustifiably against the officer involved in the incident and another who witnessed the incident;
17. Councillor Brierley stated that he has two additional recordings of two subsequent telephone conversations with the officer (but not supplied as evidence).

The Sub Committee reached these findings based on the evidence of the witnesses and the written evidence provided by the investigation officer. The Sub Committee found the witnesses credible and that the council officer's version of the events of 8 November 2013 was corroborated by the recording which Councillor Brierley had made.

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 officer in question and Councillor Brierley was as between an Elected Member, and an employee of the Council. The 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. Councillor Brierley did not deny he was acting in his official capacity at the time and the content of the exchange 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's 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:

Paragraph 3.1 c (i)

You must not intimidate or attempt to intimidate any person who is or is likely to be (i) a complainant in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct

Paragraph 6 (d)

You must comply with the Council's Protocol on Member/Officer Relations

Protocol on Member/Officer Relations:

Paragraph 4.2.

It is important in any dealings between Members and officers that neither should seek to take unfair advantage of their position.

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.

Paragraph 4.3.

Members should be aware that officers are constrained in the response that they may make to public comment by Members and should not abuse officers, or question their impartiality, in public or through the press nor seek to undermine their position by abuse rudeness or

ridicule. If a member does so in an email or telephone conversation to an officer then the officer is justified in not responding to the email or in ending the telephone call.

Paragraph 4.4.

In their dealings with officers (especially junior officers) Members need to be aware that it is easy for them to feel under pressure and to feel at a disadvantage. Such feelings can be intensified where Members hold senior official and/or political office.

The Sub Committee did so on the basis of Councillor Brierley's accusations made on 8 November 2013 brought into question the officers impartiality in breach of the Council's Protocol on Member Officer Relations.

The Sub Committee found that Councillor's Brierley's dealings with the officer were clearly designed to intimidate him to prevent him from pursuing the complaint.

The Sub Committee recognised Councillor Brierley's right to freedom of expression, however, it noted that Councillor Brierley's comments and accusations were directed not to a political opponent but towards a junior 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, agreed to defer consideration of what actions to take in respect of the breaches, to its meeting scheduled for 4 November 2014 at 2:00pm.

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.