

## Combined Standards Hearing (Ad Hoc) Sub Committees

### Notice of Decision

---

Case reference:	Z38/59/67/68/84/85/99
Subject Member:	Councillor R. Brierley
Sub Committee Members:	Councillor C. Rigby (Chairman) Councillor S. Keane Councillor J. Prescott Councillor S. Dewhurst Councillor E. Smethurst Councillor L. Holland
Legal Advisor:	Mr S. Goacher
Monitoring Officer:	Mr J. Mitchell
Deputy Monitoring Officer	Mr P. Hassett
Investigating Officers	Mr P. Hogg Mr M. Kenyon
Independent Persons:	Mrs P. Gregory Mr K. Roberts
Corporate Governance Manager	Mrs J. Horrocks
Clerk to the Panel:	Mr M. Williamson
Date of Hearing:	Tuesday 4 <sup>th</sup> November 2014

This was a hearing to consider the actions to be taken by the Sub-Committees who have heard six complaints against Councillor Brierley. The complaints had been heard by the various panels and decisions taken as to whether there has been a breach of the Code of Conduct. It was not the purpose of this meeting to review those decisions.

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 meeting consisted of all of the members of the Sub Committees which had heard the complaints against Councillor Brierley and constituted a joint meeting of all of those Sub Committees convened for the purpose of considering whether sanctions should be imposed and, if so, which sanctions should be applied.

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 complaints had been outstanding for a considerable period;
- Councillor Brierley had been aware of the date and time set for the hearings for a reasonable time;
- That as a consequence of the pattern of behaviour shown by the subject Member, the Sub Committees had agreed in cases where Councillor Brierley was found to be in breach of the Code of Conduct, to defer any sanctions to a specific hearing and he had been notified of that decision;
- The investigating officer and the hearing panel Members were in attendance and had prepared for the hearing to take place.

The Sub Committee had not received notification from the subject Member as to whether he wanted the hearing to be held in public or private.

The Sub Committee sought the view of the Investigating Officers who considered that in this case, as the hearing was just to consider what sanctions to apply, there were no grounds for considering an exemption should apply so that the case should be heard in private.

For the benefit of each of the Members of the Sub-Committees the Chair summarised the conclusions reached by each of the hearings (by the order of the cases) as follows:

### **Z38/67 – Mr T. Barton 'v' Councillor R. Brierley**

At the first hearing, following an extended discussion on preliminary issues, Councillor Brierley and his representative Mr Franzen were asked to leave the hearing as they were not prepared to accept the requirements of the meeting on confidentiality. Having agreed to proceed with the hearing in Councillor Brierley's absence, the Sub Committee heard from the investigating officer Mr M. Kenyon that Councillor Brierley visited the Pelican Centre in Tyldesley and displayed an

aggressive and intimidatory approach towards staff members when there was no reason to do so. He used a line and style of questioning that was disrespectful and insulting and made insinuations of impropriety in the relationships between the Pelican Centre and Wigan Council.

The Investigating Officer called two witnesses; Mr T. Barton, the complainant and Mr D. Holt, a senior member of the Centre's staff, to support his case.

The Sub-Committee concluded that Councillor Brierley had breached the following paragraphs of the Code of Conduct.

3.1.b) 'You must not bully or be abusive to any person'.

5. 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office into disrepute'.

The Sub-Committee was invited to consider whether Councillor Brierley had breached Paragraph 6a) of the Code of Conduct

'You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person an advantage or disadvantage'.

The Committee did not feel that a breach of this paragraph had been evidenced.

### **Z38/84 – Mrs A. McKenzie- Folan 'v' Councillor R. Brierley**

Councillor Brierley and his representative failed to attend the second hearing having indicated their intention to boycott all the remaining hearings. At this hearing, having agreed to proceed in Councillor Brierley's absence, the Sub Committee heard from the Investigating Officer, Mr P. Hogg, that Councillor Brierley had subjected a member of staff and her daughter to intimidatory behaviour on the evening of 18<sup>th</sup> June 2013 and, despite claiming to have been in the Lake District all day, had attended a meeting with Council officers and residents during that day. The investigating officer called the member of staff as a witness to support his case.

The Sub-Committee concluded that Councillor Brierley had breached the following paragraphs of the Code of Conduct:

3.1.b) 'You must not bully or be abusive to any person'.

5. 'You must not conduct yourself in a manner which could reasonably be regarded as bringing your office into disrepute'.

The Sub-Committee was invited to consider whether further actions carried out by Councillor Brierley also breached the Code of Conduct, but on legal advice declined to consider these matters as they had not been submitted for assessment by the Monitoring Officer.

### **Z38/68 – Mr A. Foster ‘v’ Councillor R. Brierley**

As previously indicated, Councillor Brierley and his representative did not attend the third hearing. Having agreed to proceed in his absence, the Sub-Committee heard from the investigating officer, Mr P. Hogg, that at around 1.30 am on 28<sup>th</sup> July 2012 Councillor Brierley arrived unannounced at the Intensive Care Unit at RAEI enquiring about a patient. Councillor Brierley was directed to the Medical Assessment Unit (MAU) where he repeatedly asked for information despite being told he could not have it. Following Councillor Brierley’s departure security guards were posted at the MAU in case he should return. Staff felt uncomfortable, intimidated and distracted but said Councillor Brierley was not threatening or aggressive.

At 11.30 the same day Councillors Brierley and McGurrin attended a meeting at the MAU with the patient’s mother and hospital staff. At the meeting the Councillors made statements which the hospital staff felt were inappropriate and made commitments which went beyond what a councillor was able to do.

The Sub-Committee was invited to consider whether Councillor Brierley had breached Para 3(1)(b) of the Code of Conduct (bullying) but owing to the specific statements of the hospital staff found that no breach was made. The Sub Committee did, however, find that Councillor Brierley had breached Paragraph 5 as a result of his visit in the early hours:

5. ‘You must not conduct yourself in a manner which could reasonably be regarded as bringing your office into disrepute’.

With regard to the meeting, however, the Committee accepted that Councillor Brierley had not made the comments deemed inappropriate by the hospital staff and therefore considered that he had not breached the Code of Conduct in this respect.

### **Z38/59 – Member of the Public ‘v’ Councillor R. Brierley**

Councillor Brierley again did not attend the fourth hearing. Having agreed to proceed in his absence the Sub Committee heard from the Investigating Officer, Mr M. Kenyon, that Councillor Brierley visited a residential property, the home of the complainant, and engaged in a heated argument with the complainant. Councillor Brierley also visited the complainant’s place of work to speak to him about a personal matter.

As a result the majority decision was that Councillor Brierley had breached the following paragraph of the Council’s Code of Conduct under the following article:

5. ‘You must not conduct yourself in a manner which could reasonably be regarded as bringing your office into disrepute’.

### **Z38/85 – Mr D. Hope ‘v’ Councillor R. Brierley**

Councillor Brierley again did not attend the fifth hearing. Having agreed to proceed in his absence, the Sub Committee heard from the Investigating Officer, Mr P. Hogg, that Councillor Brierley had entered into exchanges of emails with a staff member

regarding a Brighter Borough application which culminated in Councillor Brierley sending an email to the Chief Executive demanding that the member of staff be suspended from her duties pending an investigation into her behaviour, despite there having been no incident which would attract any disciplinary action. The email had been copied to all members of the Council and senior managers, but not to the member of staff herself. The email had also been blind copied to the press. The investigating officer called the member of staff as a witness and the Sub Committee heard that she had been embarrassed and mortified when the email had been brought to her attention. She explained that she had been left feeling depressed and humiliated as a result.

The Brighter Borough application concerned the installation of dropped kerbs for a small number of properties in Hindley Green and did not fit the criteria of the scheme.

The Sub Committee concluded that in sending the email to such a wide circulation Councillor Brierley had breached the following paragraphs of the 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.

The Sub Committee also concluded that in having ordered the dropped kerbs to be installed for such a small number of residents without prior approval, Councillor Brierley had breached Paragraph 6 b) of the Code of Conduct

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

The Sub Committee was invited to consider whether Councillor Brierley had breached Paragraph 5 (disrepute) and 6 a) (improperly conferring an advantage).

The Sub Committee felt that the threshold for Paragraph 6 a) had not been reached and did not feel it appropriate to reach a conclusion on Paragraph 5 as the subject Member had not had the opportunity to respond to this allegation.

### **Z38/99 – Mrs L. O'Halloran 'v' Councillor R. Brierley**

Councillor Brierley again did not attend the sixth hearing. Having agreed to proceed in his absence, the Sub Committee heard from the Investigating Officer, Mr P. Hogg, that Councillor Brierley had visited Wigan Town Hall, with former Councillor McGurrin on 8<sup>th</sup> November 2013. Councillor McGurrin had informed the member of staff on reception that she had a meeting with a Cabinet Member. The member of staff gave her a security badge to enable her to access the Cabinet office. Councillor McGurrin was then joined by Councillor Brierley who accused the member of staff of being biased in favour of Labour Members by virtue of having given Councillor McGurrin a security pass. Councillor Brierley subsequently telephoned the member of staff in an

attempt to influence him to withdraw his complaint. The Sub Committee also had the opportunity to listen to a recording of the conversation on 8<sup>th</sup> November. This recording was made covertly by Councillor Brierley and was handed to the member of staff on 24<sup>th</sup> December with a suggestion that the member of staff may wish to reconsider his complaint having listened to the recording. In response to the complaint submitted by the complainant on behalf of the member of staff Councillor Brierley immediately submitted complaints against the member of staff and a witness to the incident.

The Sub Committee concluded that Councillor Brierley had breached the following paragraph of the Code of Conduct:

3(1)(c)(i) 'You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant'

and paragraphs 4.4 – 4.6 of the Protocol on Member/Officer Relations resulting in a breach of Paragraph 6 of the Code of Conduct:

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

Councillor Brierley had been found to have breached the provisions of the Protocol on Member/Officer Relations at earlier hearings but before November 2013. This did not result in a breach of the Code of Conduct and therefore was not relevant to the consideration of the actions to be taken.

The Sub Committee concluded that there had been a clear pattern of repeated breaches of the Code, particularly Paragraph 3(1)(b) (bullying) and Paragraph 5 (disrepute).

The Sub Committee then took into account the sanctions available to them. Given that Councillor R. Brierley had shown contempt to the Standards Hearing (Ad Hoc) Sub Committee by his refusal to attend the hearings, despite the concessions made for him, they also considered that any sanction needed to be appropriate and in line with the severity of the breaches of the Code.

The Sub Committee recognised that Councillor Brierley had refused all offers of support and, despite the numerous opportunities given to engage in the process, had chosen not to. Instead his actions demonstrated a deliberate approach to direct attention away from his actions through employing delaying tactics, attempting to undermine the legality of proceedings and venting his frustration towards the Sub Committee Members.

The Sub Committee took into account that Councillor Brierley has constantly refused to accept any responsibility for his actions. Instead he consistently finds reasons to blame others or find excuses as to why he should be excused from the repercussions of his behaviour.

He has, on numerous occasions over a period of years, failed to treat others with respect or to recognise or accept the limitations on his rights as a Councillor. He has

consistently shown a self serving behaviour pattern without concern or consideration to either himself, but more importantly to others.

Having consulted with both Independent Persons who endorsed the Sub Committee's views that Councillor Brierley's behaviour fell well short of that acceptable for a Member and one who showed total contempt for the process, the Sub Committee resolved the following actions to be taken:

1. The formal Decision Notice of the outcome of the hearing is to be published on the Council's website and details of the outcome in a newspaper circulating in the Hindley Green area;
2. The Member be asked to submit unconditional written apologies (assisted by the Monitoring Officer) to all those who have been offended, which the Council may publicise for circulation to all the complainants by 5th December 2014;
3. That a report is to be submitted to the Standards Committee and Council setting out the outcome from the hearing and noting whether the Member has submitted written apologies to the Monitoring Officer;
4. That the report to Council include a recommendation that the Member be censured;
5. The Member is to engage with a programme facilitated by an external provider that will address his issues and behaviour with a signed agreement as to what outcomes are to be achieved. This is to be done within six months of receipt of his apologies;
6. Due to his continued pattern of unreasonable behaviour, it is to be recommended that the Councillor continues to engage with specialist support to help him address his issues;
7. The Sub Committee endorsed the process whereby all emails Councillor Brierley sends to officers continue to be managed before delivery to the officer. They should only be forwarded on to the relevant officer to respond to if they are respectful and courteous and do not contain abuse, rudeness or ridicule and are not considered to be harassing either in the content of the email or volume of emails he sends to the officer. Officers are to respond to emails from the Councillor only to the Councillor's Council email address;
8. Having particular regard to the nature and pattern of bullying behaviour consistently shown, the Sub Committee endorsed the process whereby any contact by Councillor Brierley with Council officers should be restricted to emails, except for urgent matters requiring an immediate response, which may be made by telephone, but only to a named officer or officers supplied to him by the Council, from time to time;
9. That the removal of Councillor Brierley's ability to support Brighter Borough applications for funding be continued until the end of his current term of office in May 2016, or if the Councillor complies with the remaining sanctions and exhibits

markedly improved behaviour, the Sub Committee may meet to consider whether it should be reinstated;

10. That Councillor Brierley's on line biography be removed from the 'Your Councillor' page on the Council website;
11. Failure by the subject Member to abide by the sanctions will trigger a re-convened Sub Committee before the New Year so that further actions may be considered should the Member fail to comply with the above requirements. The potential sanctions may include, but will not be not limited to, for example, recommending to Council that Councillor Brierley be withdrawn from the Confident Place Scrutiny Committee and that any Council resources such as IT be removed.

---

### **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.