

Standards Ad Hoc Sub Committee

1.00 pm, 28 September 2018

Present at the meeting

Councillor M W Winstanley (Chairman)
Councillor S Dewhurst

Councillor M McLoughlin

Independent Members

Greg Byron

Officers in attendance

Diane Adshead, Deputy Democratic Services Manager
David Kitson

Member subject to Breach of the Code of Conduct

Councillor Brierley

Investigating Officer

Linda Comstive

1 Consideration of Investigation Reference CL77/68:

The Sub Committee considered a report of the Investigating Officer, Linda Comstive, which requested Members to consider allegations against a Councillor that he had breached the Council's Members' Code of Conduct.

At the beginning of the hearing, the Subject Member, Councillor Brierley advised the Sub Committee that he would be represented by Councillor Paul Maiden.

The Councillor stated that he had not received the papers for the hearing with adequate time to consider them properly, and that this amounted to discrimination on the grounds of disability (specifically based on his dyslexia). The Sub-Committee were informed that the Councillor:

- (a) had been in receipt of the draft report (which had not been amended) since March 2018;
- (b) had refused to engage with the standards process despite multiple opportunities to do so, other than to state that he had no intention of making a response because the MO had not followed procedure (which was addressed and not accepted at the outset of the standards process);
- (c) had been offered the assistance of a Democratic Support Officer to go through the papers in detail with him but had not taken this offer up.

Councillor Maiden sought to call evidence from a number of other Councillors who were in attendance. It was explained that the Councillor had had numerous

opportunities to put forward evidence as part of the standards process, and that he had not given any prior indication to the Council that he wanted to call such evidence. As such, allowing this evidence would be contrary to natural justice and fair process. Nonetheless, the Sub-Committee requested that the Councillor explain the nature of the evidence and what purpose it would serve with reference to the complaint being dealt with. The Councillor stated that the witnesses would be providing character evidence in relation to the Deputy Monitoring Officer (DMO). The Investigating Officer was asked for her representations about this and strongly opposed the admission of the evidence.

In response the Councillor stated that to not allow this evidence would be to discriminate against him on the grounds of disability (specifically based on his dyslexia). The Sub-Committee were again informed that the Councillor:

- (a) had been in receipt of the draft report (which had not been amended) since March 2018;
- (b) had refused to engage with the standards process despite multiple opportunities to do so, other than to state that he had no intention of making a response because the Monitoring Officer (MO) had not followed procedure (which was addressed and not accepted at the outset of the standards process);
- (c) had been offered the assistance of a Democratic Support Officer to go through the papers in detail with him but had not taken this offer up.

Having considered the representations the Sub-Committee refused the request to call this evidence on the basis that:

- (a) despite having multiple opportunities to put his side the Councillor had failed to engage with the investigation and had not given prior notice that he wished to call this evidence; and
- (b) it was not the appropriate forum in which to raise allegations against Officers of the Council.

The Sub Committee considered the written and oral representations before them, and having consulted the Independent Person, on the balance of probability agreed the following facts:-

- (1) The DMO is a practising solicitor and as such has a legal duty not to mislead and to act with integrity. Her evidence is supported by contemporaneous file notes of telephone calls, and describe a pattern of behaviour by the Councillor over a long period of time, enough to find that he is consistently verbally abusive, aggressive, irate and very insulting.
- (2) The Councillor makes calls to the DMO on a regular basis, frequently calling her "incompetent", "useless", "disgusting", "a disgrace", "a waste", "not fit for her job", "a soft child", "disrespectful" and "rude", and stating that she "bullies" him and that he "will report her to the Law Society", often swearing at her in the process.

- (3) He had called the DMO on 26 April 2017 about his iPad and another Cllr. During the call he was abusive and rude, calling her "an idiot". The DMO had to terminate the call. Later that same day, on the Councillor's third call of the day, the Councillor was loud and aggressive and said to her "you don't know what you're doing". The DMO responded stating that the Councillor was being rude and abusive, and he responded "well take me to fucking court then you bitch".
- (4) On 16 June 2017 the Councillor called the DMO about trying to tape record a member of staff who had objected to the same. During the call the Councillor was very agitated and shouted a lot, so much so that the DMO asked him to stop shouting. The Councillor complained about being treated badly and slammed the phone down.
- (5) On 27 October 2017 the Councillor had called the DMO and demanded a meeting. The DMO had had to put the phone down due to the Councillor's behaviour. The Councillor rang back 5 minutes later asking for a grit bin for a church. The DMO explained that the Council could not put grit bins on private land, but the Councillor continued to demand a meeting. The DMO explained that the Councillor could not demand meetings, which made the Councillor shout more than usual. His outburst was vicious and the DMO was physically shaking after the call.
- (6) On 29 October 2017 the Councillor made 3 calls to the DMO. On the first call he was aggressive and irate, stating "I am demanding that an officer come to X Street at 3pm. If they do not arrive the press will turn up. I am sick of you playing games with me. You have no legal right to do what you are doing. You are being disrespectful". The DMO tried to placate the Councillor without success. The Councillor spoke over the DMO stating that she was bullying him and not being respectful. He stated that what she was doing was illegal and he was sick of it. The DMO continued to try to explain that it was he who was being disrespectful to her. His tone of voice was threatening and intimidating, and the DMO therefore terminated the call.
- (7) On the second call which took place approximately 2 minutes later, the Councillor was initially polite, but then started to rant stating "how disrespectful [officers] were". He claimed to have treated illegally and said he believed that the MO was being ignorant and that the DMO was a "disgrace". The DMO terminated the call.
- (8) On the third call at about 3pm on 29 October 2017, the Councillor called the DMO again and ranted at her for approximately 20 minutes. The DMO explained that she had reported his request on the Report it App and had spoken to an officer, but he continued to complain angrily and in an unreasonable tone. He started to complain that he did not know who his contact was at Wigan & Leigh Housing and that he did not want to deal with the DMO anymore. The Councillor stated that he was disappointed that he had not heard from the MO and that sanctions were wrong and they need to write to him.
- (9) The DMO explained that he had been sent a letter, but the Councillor kept repeating that it was illegal. The conversation went round in circles 4 or 5 times and the Councillor did not let the DMO speak, talking over her on each

occasion that she tried to speak. The Councillor stated that he wanted respect and that a number of officers had been rude and disrespectful to him. The Councillor was extremely aggressive in his tone, and went on to refer to his iPad being taken off him without going through standards. The DMO explained, as she had on previous occasions, why this had happened. The Councillor then referred to the Chief Executive as "a liar" and referred to the MO and the DMO as a "disgrace", stating that "the whole of legal was useless" and that he would stand up and say so at Council". At this point the DMO told the Councillor that she would terminate the call because he was being abusive.

The Sub-Committee considered the written and oral representations, and after having consulted the Independent Person made the following decision on the balance of probability:

- (a) The Councillor was acting in his formal capacity as a Councillor at the time of the alleged behaviour and therefore the Members' Code of Conduct applied; and
- (b) The Councillor had breached paragraph 3.1(b) of the Members' Code of Conduct.

Following a finding that the Councillor had also breached the Code of Conduct in relation to the first complaint (ref: CL77/67) the Committee (after inviting and receiving representations from the Investigating Officer and the Councillor about appropriate actions or recommendations to Council, and having consulted the Independent Person) expressed their concern about the inadequacy of sanctions under the current standards regime.

The Sub-Committee were mindful that (by his own admission during the hearing) the Councillor had over a number of years been subject to various sanctions following previous findings of breach of the Members' Code of Conduct, but these sanctions were clearly inadequate to address the Councillor's behaviour.

In terms of sanctions under the Members' Code of Conduct, the Sub-Committee determined that the Councillor shall by the end of October 2018 send a written apology to the DMO.

The Sub-Committee also recommended that the Chief Executive and the MO consider whether there were any administrative measures (outside of the standards regime) that could be put in place:

- (1) for the purpose of protecting the health, safety and wellbeing of staff and third parties; and
- (2) to facilitate the proper discharge of the Council's functions.

The meeting concluded at 6.05 pm