



# Restricted Investigation - Provision of Investigating Officer (Councillor Code of Conduct Complaints)

## Final Report

Borough Council of Pendle

Investigating Officer: Sue Ward

Reference: AFS-02-23/24 Councillor David Whipp

Date of Issue: 1 February 2024

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## 1 Report Distribution

This report has been compiled and issued solely for the consideration of the intended recipients named below.

Name	Position
David Whipp	Subject Councillor
David Albin	1 <sup>st</sup> Complainant Councillor
Jenny Purcell	2 <sup>nd</sup> Complainant Councillor
Ash Sutcliffe	3 <sup>rd</sup> Complainant Councillor
Kevin Salter	4 <sup>th</sup> Complainant Councillor

## 2 Reporting Control

Report Issue Date	Report Author	Report Reviewer
01/02/2024	Sue Ward / MIAA Investigator	Paul Bell / MIAA Senior Manager

## 3 Acknowledgement and Further Information

MIAA would like to thank all relevant staff for their co-operation and assistance in completing this investigation.

If you have any queries regarding this report or its contents, please contact the Investigating Officer or Engagement Lead. To discuss any other issues, please contact the MIAA Regional Assurance Director (Anti-Fraud and Investigation Services) at MIAA HQ on 0151 285 4500.

## 4 Introduction and Investigation Background

- 4.1. The Borough Council of Pendle ('Pendle BC') required the provision of an independent, external Investigating Officer to conduct two formal Members' Code of Conduct investigations:
  - 4.1.1. An investigation into a complaint allegation from Councillor David Albin that Councillor David Whipp, at a council meeting held at Nelson Town Hall on 18/10/2022, did kick open the rear council chamber door when Councillor David Albin was closing it after some of the Labour, Liberal Democrat and Independent councillors had left the council chamber and the council meeting was still in session. Furthermore, that Councillor David Whipp treated Councillor Jenny Purcell with physical disregard when Councillor Purcell proceeded to try and shut the rear door of the council chamber. Councillor David Albin alleges that these actions were contrary to the Councillor's Code of Conduct and the actions by Councillor David Whipp caused pain to his hand and arm.
  - 4.1.2. An investigation into a complaint allegation from Councillor Jenny Purcell that Councillor David Whipp, at a council meeting held at Nelson Town Hall on 18/10/2022, did physically abuse herself and Councillor David Albin when they each, separately, closed the rear door of the council chamber after some of the Labour, Liberal Democrat and Independent councillors had left the council chamber and the council meeting was still in session. Councillor Jenny Purcell alleges that the actions by Councillor David Whipp, when he pushed the council chamber door open with force, hurt Councillor David Albin's hand, and banged Councillor Purcell's bad hand, and nearly pushed her to the ground. Councillor Jenny Purcell alleges that these actions were contrary to the Councillor's Code of Conduct.
  - 4.1.3. An investigation into a complaint allegation from Councillor Ash Sutcliffe that Councillor David Whipp, at a council meeting held at Nelson Town Hall on 18/10/2022, did proceed to kick the door open into the council chamber and directly into Councillor David Albin. Councillor David Albin closed the rear chamber door after some of the Labour, Liberal Democrat and Independent councillors had left the council chamber and the council meeting was still in session. Councillor Ash Sutcliffe alleges, in his complaint, that *'Councillor David Whipp's behaviour is wholly unacceptable, completely unreasonable and causes me much anxiety about being in the same room as someone so inclined to violent outbursts as that I witnessed'*. Councillor Ash Sutcliffe alleges that this was contrary to the Councillor's Code of Conduct.
  - 4.1.4. An investigation into a complaint allegation from Councillor Kevin Salter that Councillor David Whipp, at a council meeting held at Nelson Town Hall on 18/10/2022, did kick the rear council chamber door open, immediately after Councillor David Albin had closed the chamber door after some of the Labour, Liberal Democrat and Independent councillors had left the council chamber and the council meeting was still in session. Councillor Salter alleges that Councillor David Albin's hand was injured by the actions of Councillor David Whipp and that Councillor Jenny Purcell then closed the door again and Councillor David Whipp again forced the door open, knocking Councillor Jenny Purcell out of the way. Councillor Kevin Salter alleges that these actions were contrary to the Councillor's Code of Conduct.

- 4.2. MIAA's Anti-Fraud and Investigations Service has been requested by the Council's Monitoring Officer / Head of Legal Services (Mr Howard Culshaw) to provide an independent Investigating Officer to conduct the necessary enquiries and interviews, in accordance with the document entitled: 'Arrangements for dealing with allegations of breaches of the Code of Conduct for Councillors'.
- 4.3. The principal objective of the engagement was to conduct an independent investigation into each allegation, in accordance with Council policy and procedures, and make findings, on balance of probability basis, as to whether there had been a failure on the part of Councillor David Whipp to comply with the Members' Code of Conduct.

## 5 Executive Summary

- 5.1. The Investigating Officer reviewed the "Code of Conduct for Members" and "Arrangements for dealing with allegations of breaches of the Code of Conduct for Councillors" to ensure the appropriate process was followed, which has been the case.
- 5.2. The Investigating Officer attempted to speak to twenty-three witnesses who were attendees at the full meeting of Pendle council on 18/10/2022 where the alleged breaches occurred, (sixteen Councillors and seven Council officers) via Microsoft Teams. Contact was also made with nine Councillors who were subject councillors, complainants, or both. There were twenty-eight Councillors in attendance at the meeting, one councillor, Ruby Anwar, left before the alleged incidents occurred, and two Councillors, Paul McGladdery and Neil McGowan are no longer serving Councillors. No contact details are held for Neil McGowan or Paul McGladdery to interview them as witnesses. Paul McGladdery no longer lives in the UK. A total of thirty-two Councillors and Council officers were contacted. Seven Councillors did not engage with the process at all and a further five did not want to give a statement for various reasons that are included in the list in Section 6 of this report.
- 5.3. The Investigating Officer viewed the two recordings of the meeting which were uploaded to YouTube by the Councillors Tom and David Whipp. These are not official Pendle Council recordings. The first recording of the meeting covers two hours and thirty-seven minutes. The recording starts when the Councillors are gathering in the council chamber for the meeting and the meeting is convened after the mayor enters the chamber. The recording continues during the one hour and six minutes adjournment and the continuation of the meeting until the recording is stopped for a short period, when the meeting was closed to the public, whilst the Councillors and Council officers were discussing enforcement cases.
- 5.4. The second recording is a resumption of the meeting that is open to the public and lasts for six minutes and eleven seconds. There is audio on both recordings, but it is not possible to hear everything that is said due to the distance of the recording equipment from the main part of the Council chamber.
- 5.5. The Investigating Officer finds that Councillor David Whipp has breached the Code of Conduct as he did show disrespect towards councillors David Albin and Jenny Purcell by using unnecessary, unwarranted, and unreasonable force, and callous disregard for their personal safety and wellbeing, when opening the Council chamber door after those Councillors had closed it. The detailed enquiries and key findings are in sections 6 and 7 of this report.

## 6 Enquiries Undertaken/ Key Findings

- 6.1. The Local Authority has a “Code of Conduct for Members” document that prescribes “the conduct expected of members and co-opted members of the Council” based on the Seven Principles of Public Life “selflessness, integrity, objectivity, accountability, openness, honesty and leadership”.
- 6.2. The seventh bullet point of this document contains the rules around treating the various Council stakeholders, including other Councillors “with respect”. Respect is defined as “politeness and courtesy in behaviour, speech and the written word”. The Code later states “as a councillor you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner”.
- 6.3. Disrespect is defined in the Code of Conduct for Members as including “personal attack, harassment and bullying”. The Code then provides further sub-definitions of harassment and bullying, but not personal attack:
  - Harassment – “conduct that causes alarm or distress or puts someone in fear of violence on at least two occasions”.
  - Bullying – “offensive, intimidating, malicious, insulting behaviour or abuse or misuse of power which undermines, humiliates, denigrates or injures the recipient”.
- 6.4. The “Arrangement for dealing with allegations of breaches of the Code of Conduct for Councillors” is a clear and well-written document. It makes clear the requirement for the Monitoring Officer to appoint an Investigating Officer, “a Council officer, an officer of another Council, or an external investigator”, as in this case.
- 6.5. The document requires that the Councillor who is the subject of the complaint should receive a copy of the complaint, which did happen in respect of the four instances.
- 6.6. At the end of the investigation, the Investigating Officer is required to provide a draft report and to send copies of that draft report to the Complainant(s) and Subject Councillor(s) for comments. After taking such comments into account, a final report can be issued to the Monitoring Officer. It is then up to the Monitoring Officer to “send the matter for Local Hearing before the Hearings Panel” or “after consulting the Independent Person, seek Local Resolution”. The document does not make clear who this Independent Person is.
- 6.7. This document includes actions that can be taken by the Hearings Panel and the provision for appeal (“Subject to Judicial Review, or a decision of the Local Government Ombudsman, there is no right of appeal against a decision of the Monitoring Officer or of the Hearings Panel”).
- 6.8. The YouTube video recordings of the council meeting in Nelson Town Hall on 18/10/2022 were available to view. The recordings were made by Councillors David and Tom Whipp and were streamed live on YouTube. YouTube is an online video sharing and social media platform. There are two videos of the meeting. The first video ends after two hours, thirty-seven minutes and fifty-five seconds. The video was stopped because a brief part of the meeting was not open to the public due to enforcement matters being discussed. The second video runs for six minutes, and eleven seconds and it is during that period that the alleged breaches of the Code of Conduct by Councillor David Whipp took place.

6.9 The Investigating Officer has undertaken a detailed analysis of the second YouTube video; this is a separate document and will be issued as Appendix A with this report. Four councillors made complaints to Howard Culshaw and/or the Chief Executive of Pendle Council, Rose Rouse, about David Whipp's behaviour at the Council meeting held at Nelson Town Hall on 18/10/2022. The complaints from Councillors David Albin, Jenny Purcell, Kevin Salter, and Ash Sutcliffe were made on either 18/10/2022 or 19/10/2022. The allegations relate to Councillor David Whipp's behaviour when Councillor David Albin and Councillor Jenny Purcell closed the rear door of the council chamber after most of the Labour, Liberal Democrat and Independent councillors had left the chamber. The alleged behaviour of Councillor David Whipp is that he forcibly 'kicked open/ fiercely pushed open' the rear chamber door after Councillor David Albin closed it and that he pushed open the rear door of the Council chamber with force when Councillor Jenny Purcell closed the door. In doing so, it is alleged that Councillor David Whipp's behaviour hurt the hand and arm of Councillor David Albin and caused Councillor Jenny Purcell to be pushed forward from her position behind the door, resulting in Councillor Purcell having to steady herself against a desk in the Council chamber to prevent herself from falling to the floor. The meeting was attended by twenty-eight Councillors and seven Council Officers.

6.10 The potential witnesses for this investigation were:

- Councillor David Albin (Conservative) (Complainant) – witness statement signed.
- Councillor Jenny Purcell (Conservative) (Complainant) – witness statement signed.
- Councillor Ash Sutcliffe (Conservative)(Complainant) – witness statement signed.
- Councillor Kevin Salter (Conservative) (Complainant) - witness statement signed.
- Councillor David Whipp (Liberal Democrat) (Subject Councillor) – witness statement signed.
- Councillor Mike Goulthorp (Conservative) (Witness) - witness statement signed.
- Councillor David Cockburn-Price (Conservative) (Witness) - witness statement signed,
- Councillor Sarah Cockburn-Price (Conservative) (Witness) - witness statement signed.
- Councillor Nadeem Ahmed (Conservative) (Witness) - witness statement signed.
- Councillor Kieran McGladdery (Conservative) (Witness) - witness statement signed.
- Councillor Chris Church (Liberal Democrat) (Witness) - witness statement signed.
- Richard Gibson, Pendle Council Director of Resources (Witness) - witness statement signed.
- Neil Watson, Planning, Economic Development and Regulatory Services Manager (Witness) - witness statement signed.
- Rose Rouse, Pendle Council Chief Executive (Witness) - witness statement signed.
- Councillor Martyn Stone (Conservative) (Witness) – interviewed, draft statement prepared but no further contact.
- Jane Watson, Pendle Council Head of Democratic Services (Witness) - interviewed, draft statement prepared but no further contact.
- Howard Culshaw, Pendle Council Head of Legal Services (Witness) – does not feel that it is appropriate for him to make a statement as he is Pendle Council's Monitoring officer.
- Councillor Zafar Ali (Labour) (Witness) – contact made but does not wish to make a statement as sits on Standards Committee and does not want to be unable to sit on the Standards Committee if he gets involved.



- Councillor Yasser Iqbal (Labour - Mayor) (Witness & Chair of Meeting) - contact made but does not wish to make a statement as sits on Standards Committee and does not want to be unable to sit on the Standards Committee if he gets involved.
- Councillor Mohammad Ammer (Witness) – contact made – has no recollection of the meeting.
- Councillor Tom Whipp (Liberal Democrat) (Witness) - initial contact made, agreed to attend a meeting but did not respond to attempts to arrange a meeting.
- Councillor Naeem Hussain Ashraf (Labour) (Witness) - does not wish to make a statement.
- Councillor Mohammed Iqbal (Independent) (Witness) - does not wish to make a statement.
- Joanne Eccles, Pendle Council Officer (Witness) - does not wish to make a statement.
- Councillor Mohammad Aslam (Conservative) (Witness) - did not respond.
- Councillor Mohammad Kaleem (Conservative) (Witness) - did not respond.
- Councillor Neil Butterworth (Conservative) (Witness) - did not respond.
- Councillor Faraz Ahmad (Labour) (Witness) - did not respond.
- Councillor Mohammed Adnan (Labour) (Witness) - did not respond.
- Councillor Brian Newman (Liberal Democrat) (Witness) - did not respond.
- Councillor Dorothy Lord (Liberal Democrat) (Witness) - did not respond.
- Trish Judson, Pendle Council Mayor's Attendant (Witness) - did not respond.

6.11 The Investigation Officer interviewed thirteen witnesses who were at the council meeting, twelve of whom were in the council chamber at the time that the alleged incidents occurred, and one was in the corridor outside the rear council chamber door. Four of the councillors who were in the chamber at the time of the incidents have submitted Councillors Code of Conduct complaints regarding Councillor David Whipp's behaviour.

The twelve witnesses who were inside the Council chamber are nine councillors and three council officers.

6.12 Eight of the witnesses who were inside the council chamber when the incidents occurred (five councillors and three council officers), have stated that it is their recollection that the door to the council chamber was kicked open after Councillor David Albin had closed it, after most of the Labour, Liberal Democrat and Independent councillors had left. These eight witnesses are five councillors and three council officers.

The remaining four witnesses (all Councillors) who were inside the council chamber when the incidents occurred, have stated that the rear council chamber door was 'flung open with great force', 'pushed open with considerable force', 'opened in a forceful manner' and 'flew open with a lot of force'. The one witness who was in the corridor outside the council chamber door when the incidents occurred, Councillor Chris Church, has stated that Councillor David Whipp pushed open the door on one occasion using the palms of his hands and he does not know who pushed the handle down to enable the door to open. Councillor Church says that he did not see any kicking or punching. The incidents regarding the opening and closing of the council chamber door, after most of the Labour, Liberal Democrat and Independent councillors walked out of the council chamber, are shown on the second YouTube video from two minutes eleven seconds to three minutes twenty-five seconds.



6.13 The Investigation officer has also interviewed Councillor David Whipp as the Subject Councillor. Councillor David Whipp has stated that he did not kick the door open. He states that he tried to open the door by the handle and felt resistance on the handle, it would not push down. David Whipp states that he pushed down with one hand and pushed the door with his other hand. He states that he did not apply any force to the door when he opened it. When he pushed the door a second time, there was no resistance. He was prepared for resistance when he pushed the door on this occasion, and there was none, and the door 'flew' open. There was no resistance and that is why it opened as it did.

6.14 Councillor David Whipp states that he cannot comment about the video footage showing that the door opened very fast. He pushed the door, expecting it to have some resistance behind it and it opened in the way that it did. Councillor David Whipp states that he was not aware that Councillor David Albin had crossed the open doorway and closed the door, he states that he was not aware that the door had been closed. Councillor David Whipp cannot recall how he could have opened the door only one second after Councillor David Albin had closed it. Councillor David Whipp states that, after opening the door after Councillor David Albin had closed it, he put his foot in the doorway immediately after he opened it, and that was the only foot involved. He says that he put his foot between the door and the door jamb so that nobody would be able to close it. Councillor David Whipp states that he was not aware that Councillor David Albin had been hurt when he opened the door. Councillor Jenny Purcell has stated in her witness statement that David Albin shouted out as the action from outside the door had hurt his hand.

The second video of the meeting, which commences after the adjournment, does have sound recording on it. The Investigating Officer has viewed the video of the meeting when Councillor David Albin closed the door, and it was re-opened whilst his hand was still holding the door handle. David Albin can be seen holding his hand in the open doorway and the words, 'What's happening?' can be heard whilst Councillor Albin is speaking. Councillor David Whipp states that, *'I was not aware that David Albin had been hurt when I opened the door. I did not hear David Albin shout out and speak to the mayor. I heard Councillor Mike Goulthorp shout, 'What's going on?'. Councillor Mike Goulthorp is not seen to be speaking whilst the words, 'What's happening?' were heard.* The Investigating officer has concluded that Councillor David Albin's words of *'What's happening?'* could have been heard in the corridor outside of the council chamber and he was stood in the open doorway holding his left hand. Nine witnesses who were present inside the council chamber at the time that Councillor David Whipp opened the door after Councillor David Albin had closed it, have stated that they could see that Councillor David Albin's hand had been hurt by the action. Councillor Mike Goulthorp did not state in his witness statement that he shouted out when the door was opened after Councillor David Albin had closed it.

6.15 The Investigating Officer finds that Councillor David Whipp has breached the Code of Conduct as he did show disrespect towards councillors David Albin and Jenny Purcell by using unnecessary, unwarranted, and unreasonable force, and callous disregard for their personal safety and wellbeing, when opening the Council chamber door after those Councillors had closed it.

## 7 Conclusions

- 7.1. The allegations made against Councillor David Whipp that he breached the Code of Conduct for Council Members by disrespecting Councillors David Albin and Jenny Purcell at the Pendle Council meeting on 18/10/2022, can be seen to have been confirmed. The Code of Conduct states that 'Disrespect includes personal attack, harassment, and bullying. Bullying is offensive, intimidating, malicious, insulting behaviour or abuse or misuse of power which undermines, humiliates, denigrates, or injures the recipient. Harassment is conduct that causes alarm or distress or puts someone in fear of violence on at least two occasions. Personal attack can be verbal or physical. This can include reckless, callous, and negligent behaviour which shows disregard for a person's emotional and physical well-being.
- 7.2. The Investigating Officer has considered the actions of Councillor David Whipp outside the Council chamber on 18/10/2022 with regard to the Councillor's Code of Conduct explanation of disrespect. The Investigating Officer finds that Councillor David Whipp's behaviour created an unpleasant, intimidating, and hostile situation for Councillors David Albin and Jenny Purcell, by his unwelcome and unnecessary physical conduct.
- 7.3. The video recording of the Council meeting shows that the rear Council chamber door was opened into the council chamber by Councillor David Whipp with excessive, unreasonable, and unnecessary force on more than one occasion.
- 7.4. Councillor David Whipp has confirmed that he opened the door on the occasions that Councillors David Albin and Jenny Purcell had closed it whilst the Pendle Council meeting on 18/10/2022 was in progress.
- 7.5. The allegations against Councillor David Whipp all refer to his behaviour after he and other Councillors had left the chamber to prevent a vote being taken regarding the scheme of delegation of the Council planning committee that had been proposed at the August 2023 Council meeting.
- 7.6. Complaints were made about Councillor David Whipp's behaviour by four Councillors. All the complaints refer to the force with which Councillor David Whipp opened the rear Council chamber door after he had left the chamber on more than one occasion. Three of the complainants refer to Councillor David Whipp kicking the door open, and the remaining complaint refers to the door being opened with great force.
- 7.7. Apart from Paul McGladdery and Neil McGowan, two ex-councillors for whom no contact details are held, and Councillor Ruby Anwar who attended the Council meeting but left before the alleged incidents occurred, the Investigating Officer has contacted all Councillors who were present at the Council meeting when the alleged incidents occurred. Eleven councillors have provided witness statements including the Subject Councillor, Councillor David Whipp.
- 7.8. Nine of those Councillors were inside the Council chamber when the alleged incidents regarding the rear chamber door occurred:
  - Four Councillors have stated in their witness statements that, when the rear council chamber door was opened using force, against the Councillors who had closed the door. After Councillor David Albin had closed the door, they saw Councillor David Whipp standing outside in the doorway with his leg raised in a position that led them to believe that he had kicked the door open. Councillor David Albin has stated that, as the door was opened when he was holding the door handle, he could feel the pressure of the force against the door, specifically in the lower area of the door.

- Five Councillors have stated in their witness statements that, the rear council chamber door was opened with great force, considerable force, or a lot of force, against the Councillors who had closed the door. One Councillor has also stated that in addition to the door being opened with great force, he saw a foot retracted back as the door flew open. That witness states that he saw the person's bare knee and trainers and realised that only one councillor wears shorts to attend Council meetings and that is Councillor David Whipp.
- 7.9. Two Councillors who have provided witness statements were in the corridor out the rear council chamber door when the alleged incidents occurred. One of those Councillors is Councillor David Whipp who is the Subject Councillor, a witness statement has been taken and is detailed in para. 6.12 and 6.13 of this report.
- 7.10. A witness statement has been provided by Councillor Chris Church who was also in the corridor outside the Council chamber door after most of the Labour and Liberal Democrat councillors had left the chamber whilst the meeting was in progress. Councillor Chris Church's recollection of the incidents does differ, in some respects, from that of all the other Councillors who have provided statements. Councillor Church recalls that, shortly after the Councillors left the chamber, the chamber door was slammed shut from the chamber side. The video recording of the incidents does not show that the council chamber door was slammed shut. Councillor David Albin closed the door in an apparently normal manner approximately twenty-eight seconds after the Councillors had left the chamber.
- 7.11. Councillor Church has said that someone pushed the door open from the corridor side on a couple of occasions. Councillor Church said that on one occasion, Councillor David Whipp pushed open the door, but he is not certain whether he opened the door on both occasions. He also states that, when David Whipp pushed open the door from the corridor, he had both of his palms against the door, he does not know who pushed the handle down to enable the door to be opened. On the second occasion, someone inside the chamber was leaning against the door, he knew this because there was obvious resistance when the door was being pushed open.
- 7.12. Councillor Church says that there was shouting from inside the Council chamber, and he heard from the inside that the meeting was closed. His recollection is that 'once the meeting was closed, we went on their way, directly from the corridor and did not re-enter the council chamber'. Councillor Church wanted to add that he has been told that some people have said that the chamber door was kicked or punched open, and he did not see any kicking or punching. The video recording shows that the Council chamber door was open when the mayor closed the meeting and Councillor Church did re-enter the council chamber to collect his papers when the meeting had ended.
- 7.13. It is our opinion that the video recording of the council meeting shows that the rear Council chamber door was opened into the council chamber by Councillor David Whipp with excessive, unreasonable, and unnecessary force after Councillors David Albin and Jenny Purcell had closed the door. Councillor David Whipp's stated reasons for re-opening the Council chamber door, do not justify the way he forced opened the door. Councillor David Whipp states that he was exonerated by the Police investigation into the matter, however the burden of proof for criminal proceedings is much higher than for this investigation.
- 7.14. Councillor David Whipp alleges in his witness statement that the Conservative councillors, who have stated that their observations of the incidents regarding the Council chamber door, led them to the conclusion that Councillor David Whipp did kick open the door, are '*liars*'. This is a

derogatory, offensive and unevidenced statement. Councillor David Albin's witness statement is from personal experience as he was directly involved and affected by the incident.

- 7.15. Our conclusion is that the actions of Councillor David Whipp when forcibly opening the Council chamber door, after Councillors David Albin and Jenny Purcell had closed it, with no consideration given to the safety and wellbeing of his fellow Councillors and without justification, amounts to failing to treat fellow Councillors with respect.
- 7.16. Based on the findings of this investigation, it is recommended that the Monitoring Officer should apply the next stage of the "Arrangement for dealing with allegations of breaches of the Code of Conduct for Councillors" as Councillor David Whipp's actions amount to 'disrespect' per the definitions in the Council's Code of Conduct for Members document.

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