



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

Final Report

Borough Council of Pendle

Investigating Officer: Sue Ward

Reference: AFS-03-23/24 Councillor David Whipp

Date of Issue: 26 March 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
Ash Sutcliffe	Complainant Councillor

2 Reporting Control

Report Issue Date	Report Author	Report Reviewer
26 March 2024	Sue Ward / MIAA Investigator	Claire Smallman / 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. 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 one formal Members' Code of Conduct investigations:

4.1.1. An investigation into a complaint allegation from Councillor Ash Sutcliffe that Councillor David Whipp subjected Councillor Ash Sutcliffe to intimidating behaviour by speaking in a derogatory manner to him and shaking large sheets of size A3 paper (297mm x 420mm) very close to Councillor Ash Sutcliffe's face whilst shouting, 'can you not read?', 'can you not read what you've done?' and 'this is what the Conservative administration have done', towards him during the meeting of the Council Executive meeting held at Nelson Town Hall on 20/07/2023. Councillor Ash Sutcliffe alleges that this was contrary to the Councillor's Code of Conduct by treating him with disrespect.

4.1.2. The focus of the issues raised by Councillor David Whipp at the Council Executive meeting on 20/07/2023 related to the delay in publishing the Pendle Leisure Trust report and the wording on page 3 of the report which states, 'The Council has recognised that it cannot afford to retain and refurbish/replace all three facilities and it needs to consider its options for the future'.

Councillor David Whipp was concerned that the feasibility report had not been issued to the council when it was received. The draft report was received in January 2023, but the final version of the feasibility report was not received until 14/03/2023. The date on the report was not amended by the Consultants in March 2023 and this caused the confusion in the meeting. The report was received too late for adequate briefings/advance notice for the Policy & Resources Committee meeting on 16/03/2023 or the full Council meeting on 23/03/2023. The pre-election period (previously known as 'purdah') started immediately after this time.

Councillor David Whipp believed the wording in the report suggested that the previous Conservative administration had briefed the consultants that they wanted to close one or two of the leisure centres.

The Conservative Councillors, including Councillor Ash Sutcliffe, who were present at the meeting of the Council Executive as observers, stated that this was not correct. It was at this point when Councillor Ash Sutcliffe was speaking, that the behaviour of Councillor David Whipp resulted in the complaint allegation from Councillor Ash Sutcliffe.

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 the 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 seventeen councillors and council officers who were attendees at the meeting of the Pendle Council Executive on 20/07/2023 where the alleged breach occurred, (nine Councillors and eight Council officers) via Microsoft Teams. The Investigating Officer did not request a meeting with the Monitoring Officer for Pendle Council, Howard Culshaw, who was also present at the Council Executive meeting, as he has previously stated that he does not consider that it is appropriate for him to make a witness statement. The Subject Councillor, David Whipp and the Complainant, Councillor Ash Sutcliffe are included in the seventeen attendees. Of the seventeen Councillors and Council officers contacted, two councillors and four council officers did not engage with the process at all, 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. Two councillors made initial contact but did not sign a statement and three councillors and one council officer have signed witness statements for the investigation. The Subject Councillor, David Whipp did not engage with the investigation process. An email was sent to Councillor David Whipp to arrange a Teams meeting on 01/02/2024. A reminder was issued to Councillor David Whipp on 09/02/2024 with a cut-off date for contact of 16/02/2024. The Investigating Officer contacted Pendle Council on 09/02/2024 to ask whether Councillor David Whipp was currently attending council meetings to check that he was not unwell or on holiday. Pendle Council responded on the same day to advise that Councillor David Whipp attended and chaired the West Craven Committee meeting on Tuesday 06/02/2024 and, as far as they were aware, Councillor David Whipp was not unwell or away from home.
- 5.3. The meeting of the Council Executive on 20/07/2023 was not video recorded.
- 5.4. The allegation is given in para. 4.1.1 of this report. Four witness statements have been obtained for this investigation including a statement given by the complainant, Councillor Ash Sutcliffe. The statements given by the other three witnesses, two councillors and one council officer, provide information that is closely in agreement with the account of what happened by Councillor Ash Sutcliffe. Excerpts from their statements include:

‘When Councillor Ash Sutcliffe was speaking, Councillor David Whipp seemed to ‘lose the plot’, he got up out of his chair and walked over to Councillor Ash Sutcliffe. He was very aggressive and pushed his paperwork into Ash’s face whilst saying, ‘Can you not read?’ and Do you not understand?’ ‘Councillor Ash Sutcliffe was really shaken up and I tried to reassure him. I could see from the expressions of some of the council officers that they were shocked by the behaviour.’

‘My interpretation of Councillor David Whipp’s behaviour was that it was definitely outside of what would be considered to be ‘normal behaviour’. It is very unusual for a councillor to get up during meetings and approach another councillor in that manner’. ‘I do not believe that Councillor David Whipp was ‘out of control’ but his behaviour was unusual and of a very assertive mindset, both in terms of his verbal language and physical approach’. ‘Having watched Councillor David Whipp’s behaviour, I can say that it could be interpreted as intimidating towards Councillor Ash Sutcliffe’.

‘Whilst Councillor Sutcliffe was speaking, Councillor David Whipp got up out of his seat and walked over to Councillor Sutcliffe. Councillor David Whipp’s behaviour was very aggressive, he held the A3 sheets of paper up very close to Councillor Sutcliffe’s face, whilst shaking them, and spoke to him in a disrespectful way saying. ‘Can’t you read?’ ‘Councillor Sutcliffe did not retaliate, he sat in his seat and was very still. In my opinion, Councillor Sutcliffe appeared very shaken by Councillor David Whipp’s behaviour’.

- 5.5. Rose Rouse’s witness statement, provided for this investigation, gives details of the timescales of the production of the final report and subsequent delay in issuing it to councillors due to the ‘pre-election’ period.
- 5.6. The Investigating Officer’s finding is that Councillor David Whipp, by his physical actions and gestures towards Councillor Ash Sutcliffe and his comments to Councillor Sutcliffe using an angry and raised voice has breached the Councillor’s Code of Conduct as he did show disrespect towards Councillor Ash Sutcliffe during the meeting of the Council Executive on 20/07/2023.

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. 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 this allegation.
- 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 and Subject Councillor 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 review the report and take appropriate action when he/she is satisfied with the report. This can be, to accept the Investigating Officer’s findings if no failure to comply with the Code of Conduct is found, and issue a Confirmation Decision, 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 potential witnesses for this investigation were:

- Councillor Ash Sutcliffe (Conservative)(Complainant) – witness statement signed.
- Councillor Nadeem Ahmed (Conservative) (Witness) - witness statement signed.
- Councillor Martyn Stone (Conservative) (Witness) - witness statement signed.
- Rose Rouse, Pendle Council Chief Executive (Witness) - witness statement signed.
- Councillor David Whipp (Liberal Democrat) (Subject Councillor) – did not engage with the investigation process.
- Councillor Asjad Mahmood (Labour) (Witness) - interviewed for statement but no response to draft statement.
- Councillor Zafar Ali (Labour) (Witness) - contact made but does not wish to make a statement as sits on Standards Committee and needs to remain impartial.
- Councillor Mohammad Ammer (Labour) (Witness) – cannot remember what happened as it was five months since the meeting.
- Councillor Mohammad Hanif (Labour) (Witness) – did not respond.
- Councillor Tom Whipp (Liberal Democrat) (Witness) - response received asking which complaint was being investigated. Reply sent and no further contact received.
- Phillip Spurr, Pendle Council Director of Place (Witness) - cannot specifically recall what happened at the meeting so does not think he would add any value as a witness to the investigation.
- Richard Gibson, ex- Pendle Council Director of Resources (Witness) – no longer works for Pendle Council - no response to text message to his mobile telephone.
- 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.
- David Walker, Pendle Council Assistant Director Operational Services (Witness) - did not respond.
- Sarah Whitwell, Pendle Council Head of Housing and Environmental Health (Witness) - not sure what information could bring to a meeting as was sat at the back of the chamber working on her laptop until her agenda item came up and left immediately after her report had been discussed.
- Iftikhar Bokhari, Pendle Council Head of Economic Growth (Witness) – did not respond.
- Ryan Gifford, Pendle Council Economic Development Officer (Witness) - does not want to make a statement as does not have much recall of it. Has regular contact with Councillors Ash Sutcliffe and David Whipp and does not want to damage his working relationship with either of them.
- Jane Watson, Pendle Council Democratic Services Manager (Witness) – did not respond.

6.9 The Subject Councillor, David Whipp did not engage with the investigation process. The Investigating Officer sent two emails to Councillor Whipp’s Pendle Council email address on 01/02/2024 and 09/02/2024, the second email with a ‘cut-off’ date of 16/02/2024 for contact to be made. The Investigating Officer contacted Pendle Council on 09/02/2024 to ask whether Councillor David Whipp was currently attending council meetings and to ask whether the council

were aware whether Councillor David Whipp was unwell or away from home. Pendle Council responded by email to advise that Councillor David Whipp attended council meetings of the Development Management Committee on 30/01/2024 and the West Craven Committee on 06/02/2024 when he chaired the meeting. Pendle Council were not aware that Councillor David Whipp was unwell or away from home.

- 6.10 The Complainant, Councillor Ash Sutcliffe was interviewed by the Investigating Officer on 05/01/2024. Excerpts from Councillor Ash Sutcliffe's witness statement, that refer to Councillor David Whipp's behaviour towards him are:

'I said that the information being given by Councillor David Whipp was a misrepresentation of the facts regarding the steer given to the Consultants and said that no steer had been given other than to consider all options. Councillor David Whipp started shouting, saying that I was lying and trying to twist the truth'. 'Councillor David Whipp's shouting was very heated.

'I asked the Chairman, Councillor Asjad Mahmood, whether I may continue speaking. Councillor Asjad Mahmood did not immediately respond, and Councillor David Whipp stood up, threw his chair back in a huff, and walked towards me. I was sat approximately 10-12 feet away from where Councillor David Whipp was sitting'.

'Councillor Whipp approached me and held the A3 paper very close to my face and shook it from side to side. He shouted, 'can you not read?', 'can you not read what you've done?' and 'this is what the Conservative administration have done. I was not a part of the transformation process and leisure review. Councillor David Whipp was clearly very angry, his face was contorted with rage'.

'I was very shocked by Councillor David Whipp's behaviour towards me and was shaking. It is very rude and disrespectful to suggest that I could not read and to interrupting my right to speak is not only disrespectful, but also embarrassing, belittling, and upsetting. Councillor David Whipp's aggressive physical reactions in the council chamber are disconcerting, unnerving, and extremely unpleasant for everyone who is present'.

- 6.11 The Investigation Officer finds that Councillor David Whipp has breached the Code of Conduct as his physical and verbal comments were abusive towards Councillor Ash Sutcliffe. Councillor David Whipp's behaviour showed disrespect towards Councillor Ash Sutcliffe.

7 Conclusions

- 7.1. The allegation made against Councillor David Whipp, that he breached the Code of Conduct for Council Members by disrespecting Councillor Ash Sutcliffe at the meeting of the Pendle Council Executive on 20/07/2023, 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 towards Councillor Ash Sutcliffe during the meeting on 20/07/2023 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 and intimidating situation for Councillor Ash Sutcliffe by his unnecessary verbal and physical conduct.

- 7.3. The Investigating Officer has contacted all Councillors and Council Officers who were present at the Council meeting when the alleged incident occurred. Three councillors and one Council Officer have provided witness statements including the Complainant, Councillor Ash Sutcliffe.
- 7.4 The three witness statements provided by two councillors and one Council Officer give evidence that establish the validity of Councillor Ash Sutcliffe's allegations made against Councillor David Whipp. Excerpts from the three witness statements are given at para. 5.4 of this report.
- 7.5 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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