

**HEARING SUB-COMMITTEE
DETERMINATION OF A CODE OF CONDUCT COMPLAINT**

DECISION NOTICE

Complaint No:	Complaint Considered by Monitoring Officer:	Date of Hearing:
CEC/14-15/MO11	8 January 2015 20 January 2015	24 November 2015
Members in Attendance:	Independent Person:	Investigating Officer:
Cllr Rhoda Bailey Cllr Lesley Smetham Cllr Amanda Stott	Mr Robert Fousert	Mr Simon Goacher Weightmans

Name of Complainant:	Name of Subject Member:	Borough/Town/Parish Council:
Mrs Lorraine Butcher	Brian Silvester, former member of Cheshire East Council	Cheshire East Council

1. Purpose of Hearing

To consider a complaint made against a former member of Cheshire East Council, and to determine -

- i) whether the code of conduct had been breached; and
- ii) if so, what sanction, if any to impose.

2. Exclusion of Press and Public

In accordance with Cheshire East Council's complaints procedure, meetings of the Hearing Sub-Committee are usually held in public. The subject member requested that this meeting be held in private on the grounds that, to date, the process had been conducted in private and he saw no reason for this to change.

The Panel was invited to determine the request.

RESOLVED: That the meeting be held in public.

3. Summary of Complaint

The complainant (Mrs L Butcher) alleged that the subject member (Mr Brian Silvester) had breached Cheshire East Council's Members' Code of Conduct by -

- i) Calling for a council employee to be sacked during a radio interview on 16 December 2014;
- ii) Repeating these views in a party political press release issued by him on 16 December 2014; and
- iii) Exacerbating the issue further by publishing a letter sent to him by the Council's solicitors on 19 December 2014 concerning his remarks.

The paragraph of the Cheshire East Members' Code of Conduct which the complainant alleged the subject member had breached was paragraph 7 (respect for others) -

sub paragraph a) you must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy, essential to good local government; and

sub paragraph d) you must not bully any person, including other councillors, officers of the authority or members of the public.

The complaint was initially assessed on 8 January 2015; the Monitoring Officer concluding, having consulted with the Independent Person, that the matter should be referred for external investigation. Having received the subject member's response on 15 January 2015, she completed her assessment on 20 January 2015, concluding that the matter should be referred for external investigation.

Mr Simon Goacher was appointed by the Monitoring Officer to conduct the investigation and his report was submitted for consideration to the Monitoring Officer on 31 March 2015. Having consulted with the Independent Person, the matter was referred by the Monitoring Officer to the Hearing Sub Committee on 23 June 2015.

4. Findings of Fact

The subject member confirmed that he agreed with the findings of fact in the Investigating Officer's report i.e. that he had -

- i) Called for the sacking of a council officer in the radio interview on 16 December 2014;
- ii) Repeated these views in a party political press release issued by him on 16 December 2014; and
- iii) Published a letter sent to him by the Council's solicitors on 19 December 2014 concerning his remarks.

5. Representations

Simon Goacher (Investigating Officer) presented his report and outlined his findings which indicated a breach of the code of conduct had occurred.

Brian Silvester (the subject member) made representations to the Hearing Sub-Committee and called one witness Mr S McQuade.

Additional evidence was submitted by Mr Silvester and was received by the Hearing Sub-Committee.

The Hearing Sub-Committee asked questions of Mr Goacher, Mr Silvester and Mr McQuade prior to Mr Goacher and Mr Silvester making their concluding remarks.

6. Independent Person

In accordance with the Localism Act 2011, the views of the Independent Person were sought and taken into account by the Hearing Sub-Committee before reaching its conclusion.

7. Decision of Hearing Sub-Committee

The Hearing Sub-Committee found that the subject member had breached Paragraph 7 (respect for others);

sub paragraph a) you must treat others with courtesy. You should engage with colleagues and staff in a manner that underpins mutual respect and courtesy, essential to good local government; and

sub paragraph d) you must not bully any person, including other councillors, officers of the authority or members of the public

of Cheshire East Council's Members Code of Conduct.

8. Reasons for Unanimous Decision

Mr Silvester considered that, in making his comments, he was speaking up for and voicing the concerns of his constituents. Whilst the right to freedom of expression is contained within Article 10 of the Human Rights Act, this has to be weighed against the interests of open discussion of matters of public concern against the right of the council officer to be protected from unjustified public comment. In this case, the Hearing Sub-Committee found that the subject member's comments were excessive and unjustified.

Accordingly the Hearing Sub-Committee considered that Mr Silvester had crossed an important line in respect of a Councillor's duty of care to employees which had resulted in a breach of the code of conduct.

Furthermore, Mr Silvester was found to have failed to follow appropriate procedures in that he had not taken any steps to raise his concerns through the proper channels prior to making his views public in a radio interview.

9. Sanctions

That -

a) the findings of the Hearing Sub-Committee in respect of the subject member's conduct be published; and

b) the outcome of the hearing be reported to the next meeting of Council.

10. Reasons for Imposing the Sanctions

Whilst recognising the seriousness of the matter, the Hearing Sub-Committee considered it appropriate to retain sanction a) the censure or reprimand of a member, for those who were currently serving as Councillors, which was not the case here as Mr Silvester had not been re-elected to Cheshire East Council in May 2015.

Given the nature of the breach, the Hearing Sub-Committee considered it important that its findings should be published as well as reported to Council.

Signed:

Name: Councillor Lesley Smetham, Hearing Sub-Committee Chairman

Date: 8 December 2015