



FINAL REPORT

NOT FOR PUBLICATION

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REPORT OF THE CHIEF LEGAL SERVICES OFFICER

REPORT TO STANDARDS COMMITTEE

Date: 10 MARCH 2006

Subject: LOCAL INVESTIGATION INTO A COMPLAINT AGAINST A MEMBER
Reference SBE 12139.05

Electoral wards affected:

Specific implications for:

Ethnic minorities

Women

Disabled people

Narrowing the gap

1.0 PURPOSE OF REPORT

1.1 To present to the Committee the outcome of a local investigation into a complaint against an elected Member and the Investigating Officer's final findings.

2.0 BACKGROUND AND INTRODUCTION

2.1 On 11 August 2005 Ms Sharon Bryan, an employee of Leeds City Council completed a Complaint Form which was submitted to the Standards Board for England complaining about the conduct of Councillor [Kabeer] Hussain. The Complaint Form is at pages 25 - 26 of the Bundle of Supporting Evidence (the Bundle)

2.2 On 19 August 2005 the Standards Board for England decided that the complaint should be referred to an Ethical Standards Officer for Investigation.

- 2.3 The Local Government Act 2000 enables Ethical Standards Officers to refer allegations that a Member has breached the Code of Conduct to a monitoring officer for investigation. Where such investigations are referred, they are conducted in accordance with the Local Authority (Code of Conduct)(Local Determination) Regulations 2003, as amended by the Local Authority (Code of Conduct)(Local Determination) (Amendments) Regulations 2004 and the Leeds City Council Standards Committee Procedure Rules.
- 2.4 On 1 September 2005 the Ethical Standards Officer referred the complaint against Councillor Hussain to the Monitoring Officer of Leeds City Council for local investigation.
- 2.5 The Monitoring Officer requested that her Deputy, the Chief Legal Services Officer act as Investigating Officer.

3 SUMMARY OF ALLEGATIONS

- 3.1 The summary of the allegations is contained in the Form of Complaint submitted by Ms Bryan, but in the course of the investigation the Investigating Officer refined detail of the complaints.
- 3.2 The allegations which were notified to Councillor Hussain by the Investigating Officer were that in the course of a telephone conversation on 26 June 2005 with a council employee, namely Sharon Bryan, he failed to comply with the Leeds City Council Code of Conduct. In particular that he -
- 3.2.1 Failed to treat Sharon Bryan with respect contrary to paragraph 2(b) of the Code of Conduct;
- 3.2.2. Conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute contrary to paragraph 4 of the Code of Conduct
- 3.2.3 Sought to use his position as a member improperly to secure for himself an advantage, namely preferential treatment in the handling of a noise nuisance complaint which he wished to make, contrary to paragraph 5(a) of the Code of Conduct.

4.0 CODE OF CONDUCT

- 4.1 The Leeds City Council Members' Code of Conduct states at paragraph 1 that :
- (1) A member must observe the authority's code of conduct whenever s/he (a) conducts the business of the authority (b) conducts the business of the office to which s/he has been elected or appointed; or (c) acts as a representative of the authority, and references to a member's official capacity shall be construed accordingly.
- (2) The authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.
- 4.2 Paragraph 2(b) of the Code states:
'A member must treat others with respect'.
- 4.3 Paragraph 4 of the Code states :

'A member must not in his or her official capacity, or any other circumstance, conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute'.

- 4.4 Paragraph 5(a) of the Code states :
'A member must not in his or her official capacity, or any other circumstance, use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage'.
- 4.5 The Relevant Authorities (General Principles) Order 2001 came into force on 6 April 2001 and specifies the principles which are to govern the conduct of members of relevant authorities in England.
- 4.6 Pursuant to paragraph 3(2) of the Order:
'Only paragraphs 2 and 8 of the Schedule of this Order shall have effect in relation to the activities of a member that are undertaken other than in an official capacity'.
- 4.7 Principle 2 of the Order states :
'Honesty and Integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour'.

5.0 SUBJECT MEMBER HISTORY

- 5.1 Councillor Kabeer Hussain was elected as a Leeds City Councillor at the 2004 elections. He had not previously been a member of the City Council and is not currently a member of any other authority besides Leeds City Council.
- 5.2 The councillor is lead member for City Services.
- 5.3 Councillor Hussain signed a declaration of acceptance of office on 11 June 2004. He confirmed in interview that he recalled signing that declaration of acceptance. A copy of the Declaration is at page 27 of the Bundle.
- 5.4 Councillor Hussain has confirmed that he was aware of his obligations to observe the Code and that he was familiar with its terms.
- 5.5 Councillor Hussain has confirmed that he had been provided with some induction training on the provisions of the Code shortly after his election.
- 5.6 Councillor Hussain's term of office as a Leeds City Councillor runs until May 2007.

6.0 EVIDENCE

- 6.1 Within the Neighbourhoods & Housing Department of Leeds City Council are Environmental Health Services. Amongst other things, that service deals with complaints about noise nuisance. The department runs an out-of-hours service based at South Point, South Accommodation Road, Hunslet. That service does not take calls direct from members of the public. Such calls are made to a "contact centre" which is run by Care Ring, which is part of Neighbourhoods and Housing Department and which is staffed by officers of Leeds City Council. The role of Care Ring is to obtain details of the name and address of the complainant, a telephone number and if possible the address of the source where the noise is coming from.

- 6.2 The role of the Environmental Health Services out-of-hours service and Care Ring is explained in statements of witnesses and in particular those of Richard John Bilsborough who manages the department's out-of-hours noise service and Pam Cawthrow the Care Ring Control Centre Manager. The witness statement of Richard Bilsborough is at pages 1-3 and that of Pam Cawthrow is at pages 5-6 of the Bundle.
- 6.3 Richard Bilsborough, and other witnesses explain that it is essential if a complaint regarding noise nuisance is to be pursued for the person making the complaint to provide the address at which they are being disturbed by the noise.
- 6.5 In the course of the evening of 23 June 2005 Councillor Kabeer Hussain and his family were disturbed by noise within the vicinity of his home address. Councillor Hussain says, and it is not disputed, that the noise disturbed him and his family to such an extent that he decided to register a complaint and to involve the noise nuisance team.
- 6.6 The councillor accordingly telephoned that evening in an attempt to have some action taken to deal with the noise. His call was taken by a Care Ring operator, namely Kay Rudley. All calls to Care Ring are recorded and there is available a recording of the telephone conversation between Councillor Hussain and Kay Rudley. There has been prepared for the assistance of the Committee a transcript of that telephone conversation. The transcript of the conversation is at pages 29-31 of the Bundle. A copy of the actual recording will be available at the hearing.
- 6.7 The recording of the conversation shows that when Kay Rudley sought the address of Councillor Hussain he was not prepared to supply this to her. He informed her "you don't need my address", asked her "Are you the police?" and asked her to contact the noise nuisance team telling her to "tell them it's Councillor Hussain.....and if I don't get a call, yeah, then I will deal with that person tomorrow morning". In normal circumstances, in the absence of an address from the caller, the matter would then not have proceeded beyond that point but Kay Rudley says that because the caller was a councillor she departed from normal procedures and contacted the noise nuisance team and explained to them the detail of the complaint and who it was that was calling. Councillor Hussain's telephone call to her lasted for 2 minutes and 41 seconds.
- 6.8 Kay Rudley was concerned about the attitude of the councillor both in his manner and tone and in the fact that it appeared to her that he was seeking to use his position as a councillor to receive different treatment than would an ordinary member of the public in similar circumstances. She felt that he had attempted to 'browbeat' her. Her concerns were passed on to Zam Ishaque, a former administration officer who was working with the out-of-hours team and who took the call for the noise nuisance team. Zam Ishaque subsequently sent an email to Richard Bilsborough informing him of the issues which had arisen. The statement of Zam Ishaque is at pages 7-9 of the Bundle and that of Kay Rudley is at pages 11-13 of the Bundle.
- 6.9 Amjid Chowdri a senior environmental health officer employed by Leeds City Council was working on the night of Thursday 23 June 2005 and he was made aware that a call had been taken by Care Ring from a Councillor Hussain complaining about some noise nuisance. It was agreed that he would telephone

Councillor Hussain to explain to him the procedure and the need for details regarding a home address and to seek to deal with the problem. Amjid Chowdri says it was made clear to Councillor Hussain why the information was needed and so far as Amjid Chowdri was concerned Councillor Hussain was then fully aware of the procedure. As it transpired no further action was required on the night of 23 June as by the time that Amjid Chowdri became involved the noise nuisance had ceased. The statement of Amjid Chowdri is at pages 15-16 of the Bundle.

- 6.10. On the night of 26 June 2005, Councillor Hussain was again disturbed by noise in the vicinity of his home address. Again, he contacted Care Ring and on this occasion spoke to the complainant, Sharon Bryan. Again the telephone conversation was recorded and a copy of that recording is available. Again an agreed transcript of the telephone conversation has been prepared for the assistance of the Committee. A transcript of the telephone conversation is at pages 35-39 of the Bundle and a copy of the recording will be available at the hearing.
- 6.11 Sharon Bryan, the Complainant, is a Control Centre Operator with Care Ring. She confirms that she was following the Procedures which had been outlined to her and which were set out in a Note entitled 'Helpful Notes for Operators'. She believes that she was being helpful to the councillor and she felt quite threatened and upset by the call. The Statement of Sharon Bryan is at pages 17-19 of the Bundle and the Notes are at page 33.
- 6.12. The conversation between Councillor Hussain and Sharon Bryan was in many respects similar to that between Councillor Hussain and Kay Rudley. Again the councillor refused to provide his home details to the operator. He told her "you don't need my address love ..". "I am an elected member of Leeds City Council, I've no need to give you my name and address". He repeated on a number of occasions that he was a councillor. Later in the conversation he said "you work for Leeds City Council but you will be dealt with first thing in the morning". He concluded by reiterating that he was an elected member and that "you do not need to know my address". Again the operator was prevailed upon to contact the noise nuisance team notwithstanding that such a course of action did not accord with the procedures which she was instructed to follow. Sharon Bryan did contact the noise nuisance team and on this occasion the environmental health officer who became involved was Mau Man Yip. The telephone call lasted 6minutes 14 seconds, including a pause of approximately 1 minute.
- 6.13. Mau Man Yip, a senior environmental health officer did contact Councillor Hussain and it was again explained to the councillor what the proper procedure was regarding providing details of a home address. Mau Man Yip confirms that he would not, except in exceptional cases, deal with a case without the complainant's address. Mau Man Yip says that he found the councillor to be relatively friendly to him and the councillor did supply his home address to him. Councillor Hussain was satisfied with the way Mau Man Yip handled the matter. The statement of Mau Man Yip is at pages 21-23 of the Bundle.
- 6.14. Sharon Bryan, however, was disturbed by the tone and content of the discussions that she had had with Councillor Hussain and decided to lodge a complaint. In due course it was referred to Standards Board for England.
- 6.15 Again Richard Bilsborough was notified of the incident, by email. In addition he received an email from Councillor Hussain, addressed to 'Mr Holdsworth' in which

the Councillor complained about the service he had received stating that ' he didn't see why he had to give his address'. Richard Bilsborough notes that the councillor was complaining on his own behalf, and not on behalf of a constituent and that there was no apology from the Councillor at that time. The statement of Richard Bilsborough is at pages 1-3 of the Bundle the relevant emails are at pages 41 and 42 of the bundle.

- 6.16. Councillor Hussain agreed to be interviewed by the investigating officer. He was accompanied by Councillor Martin Hamilton. Councillor Hussain answered all of the questions which were put to him. In the course of that interview he acknowledged that he had made the telephone calls and that he had refused to provide the details of his home address to either operator. He said that he was sometimes not comfortable giving his personal address to anybody over the phone and that he was not aware that Care Ring was a Council organisation. In some instances it was the view of the Investigating Officer that there was some inconsistencies in the answers given by the councillor. He said, with hindsight, if he knew the procedure he would have given his full details. He said that he asked "are you the police?" because he felt as if he was being interrogated. He denied that he was abusing his position as a City Councillor and seeking to gain an advantage. He indicated that "I can understand from her (Sharon Bryan's) position as well now what she had been going through, so like I said if I had been abrupt or been out of line in any way shape or form you know I totally apologise". A transcript of the interview is at pages 43-56 of the Bundle. A copy of the recording of the interview can be made available if required.
- 6.17 It is worth noting that all of the contact between Councillor Hussain and the complainant was over the telephone and not face-to-face, and was for a comparatively short period.
- 6.18 In the course of his interview Councillor Hussain did make what amounts to a form of apology for his behaviour. In the light of the comments made by the councillor in the course of his interview the investigating officer thought it appropriate to revisit Sharon Bryan the complainant and make her aware of the response of Councillor Hussain. This decision did, because of the unavailability of the complainant, unfortunately significantly delay the completion of the investigation. The investigating officer accordingly had a further meeting with the complainant on 8 February 2006 when he showed to her a transcript of the interview of Councillor Hussain to obtain her response.
- 6.19 The complainant indicated that as far as she was concerned if a full and unreserved apology was given to both herself and Kay Rudley then so far as she was concerned the matter would be concluded. She did not believe that the apology given in the course of the interview was sufficiently unreserved. The investigating officer considered that it might be useful to explore the possibility of agreeing an acceptable apology and how that might affect the future conduct of his investigation.
- 6.20 In taking that course of action the Investigating Officer was taking account of a number of decisions of Ethical Standards Officers, in particular in the Case Summaries of cases SBE6259.04, SBE 10709.05, SBE11713.05 and SBE11682.05. A copy of these cases is produced at pages 59-65 of the Bundle.
- 6.21 On contacting the Standards Board the investigating officer was advised that he must make a finding that he considers (a) that there has been a failure to comply

with the Code or (b) a finding that he does not consider that there has been a failure to comply. Investigating Officers have less discretion than an Ethical Standards Officer in terms of how he deals with it thereafter. A finding that there has been a breach must be put to the Standards Committee who under the regulations must hold a hearing. Whilst an apology might be strong mitigation, if there were a failure found, it was not considered that the complaint could be withdrawn at that stage. As with matters referred to an Ethical Standards Officer a finding must be made by the Monitoring Officer. Whilst the Ethical Standards Officer, however, has available a finding of breach but that no further action need be taken, that is not an option available to the Monitoring Officer who can only make one of the two findings set out above.

7.0 SUMMARY OF THE MATERIAL FACTS

7.1 The facts of this particular complaint are not, to any great extent in dispute. It is not disputed that Councillor Hussain was the subject of a degree of noise nuisance which led him to seek to register a complaint with the noise nuisance team. The complaint was a personal one and not on behalf of any constituent. Councillor Hussain made it clear on a number of occasions in the course of the conversation that he was a Councillor. The telephone call on 26 June was recorded and that recording is available. The requirement on the part of Sharon Bryan for the address of Councillor Hussain was reasonable and in accordance with procedures.

8.0 INVESTIGATING OFFICER'S FINDING AS TO WHETHER THERE HAS BEEN A FAILURE TO COMPLY WITH CODE OF CONDUCT

8 It will be recalled that there were three alleged breaches of the Code of Conduct, all arising out of a single telephone conversation lasting approximately 5 minutes. There is to a large degree, therefore, an overlap between those allegations. They are all, however, separate and distinct and different considerations apply to each of them. To come to a conclusion as to whether there has been any breaches it is necessary to consider the Code and some decided cases on it's provisions.

8.2 The Alleged Breach of Paragraph 2 - 'A member must treat others with respect'

8.2.1 There can only be a breach of paragraph 2 of the Code if Councillor Hussain can be said to have been acting in an 'official capacity'. Paragraph 2(b) only applies to activities undertaken in such a capacity. Paragraph 2(b) will not apply to a member's private life. A member is not 'on duty' permanently, albeit that there is a crossover.

8.2.2 The meaning of 'official capacity' is important when applying the Code. Paragraph 1(1) of the Code defines 'official capacity' by reference to three sets of circumstances. A member is acting in an official capacity when he or she is:

- a. conducting the business of the authority
- b. conducting the business of the office to which he or she is elected or appointed; or
- c. acting as a representative of the authority

8.2.3 Guidance suggests that members' direct dealings with officers in relation to the business of the authority will almost always constitute 'conducting the business of the member's office' [Standards Board Case Review – volume 1 page 14].

- 8.2.4 In a case referred to at page 9 of Volume 1 of the Standards Board Case Review a borough councillor was offensive and abusive towards a museum employee at a local history day. The councillor claimed that he attended the event as a private citizen, and not in an official capacity. However, he made his booking using his official title and identified himself as a councillor to members of staff at the museum when he arrived, and the council ran the museum. Under those circumstances, the ethical standards officer concluded that the councillor was acting in his official capacity.
- 8.2.5 It is the view of the Investigating Officer that whatever reason prompted Councillor Hussain to stress on several occasions that he was a councillor and that he would raise complaints in that capacity, it is the case that by doing so he changed the call from one of a purely private nature to one which meant he was acting in an official capacity. I believe that notwithstanding the stress and distress that the councillor was no doubt feeling as a result of the disturbance to himself and his family, he was unnecessarily rude, hostile and threatening to Sharon Bryan and accordingly has breached this paragraph of the Code of Conduct.
- 8.1 The Alleged Breach of Paragraph 4 – not bring his office or authority into disrepute'.
- 8.3.1 Paragraph 4 applies whenever a member is acting in an official capacity or in any other circumstance.
- 8.3.2 In the case of Coleman APE 0030 - the Case Tribunal decided that the general words 'or any other circumstance' were to be construed ejusdem generis with the specific words 'in his/her official capacity' i.e. the circumstances must be sufficiently proximate to, or reasonably be capable of being linked to or having a bearing on, the official capacity. In that particular case, a letter giving rise to the complaint contained reference to the deployment of police officers. The Case Tribunal found that this was sufficiently proximate to the Respondent's official capacity (member of Police Authority) to give rise to the possibility to a breach of paragraph 4.
- 8.3.3 The Code of Conduct defines a test for whether or not a member has brought his or her office or authority into disrepute. The test is whether a reasonable person would think that the reputation of the member or the authority would be damaged by the member's behaviour. This is an objective test and is not based on any one individual's perception. A member will have failed to comply with the Code of Conduct if his or her conduct "could reasonably be regarded" by an objective observer as bringing their office into disrepute.
- 8.3.4 In the case of Myers-Hewitt APE 0260, it was said that it is necessary for there to be a nexus between the conduct and the official capacity of the member to come within the expression 'any other circumstance'. In assessing whether the nexus exists in any given case, a variety of factors will be relevant. The proximity in time/place between the conduct and council business will be very material. It is relevant to ask how far "off duty" the councillor was at the time of the conduct complained of. However, the absence of such proximity will not necessarily prevent a finding of a breach of paragraph 4 of the Code. For example, the conduct may be of a kind, which bears so directly on the fitness of the individual for office that that of itself establishes the nexus. An obvious example of that kind of behaviour would be the commission of a serious criminal offence. Other factors, which bear on the decision, include how public the conduct is, how far it reflects an established and repeated pattern of behaviour and its motivation.

- 8.3.4 In the case of Bleakley – APE 0105, it was alleged that the Councillor had failed to comply with the Council’s Code of Conduct by bringing his office into disrepute, because after someone accidentally damaged the Councillor’s car, he was allegedly abusive, claimed additional damage and reported the person to her employer. The Case Tribunal concluded that a reasonable person with knowledge of the circumstances and bearing in mind the councillor was acting in a private capacity would consider the councillor had brought his office into disrepute.
- 8.3.4 Even if it were the view that the councillor was not acting in an official capacity it is the view of the Investigating Officer that there was the necessary nexus to bring the conduct within ‘any other circumstance’. Given the previously stated view on the Councillor’s conduct in the course of the telephone conversation it is the view of the Investigating Officer that the councillor did breach paragraph 4 of the Code of Conduct.
- 8.4 The Alleged Breach of Paragraph 5(a) – ‘not secure for himself or any other person, an advantage or disadvantage’
- 8.4.1 Guidance from the Standards Board makes it clear that a member does not actually have to confer or secure an advantage or disadvantage to fail to comply with paragraph 5(a). A breach occurs if he or she has used his or her position for the purpose of conferring or securing an advantage or disadvantage. The fact that the attempt may have been unsuccessful does not put the matter outside the scope of paragraph 5(a). [The Standards Board Case Review - Vol 1 page 55].
- 8.4.2 In the case of Councillor Creagh - APE 0216 it was the Tribunal’s view that paragraph 5(a) requires some improper motive or underhand intent in order to establish a breach.
- 8.4.3. It is the case that both operators felt that the councillor was seeking to use his position to obtain more favourable treatment. The councillor stressed the fact that he was a councillor and gave that as a reason why he should not have to give his name and address. Certainly at the time of the second call he should have known that the proper procedure was to supply an address and that a member of the public refusing to give an address would not be dealt with further.
- 8.4.4. However, having previously concluded that by notifying the staff he was a councillor he came within the ambit of paragraph 2 of the Code it is consistent to interpret the councillor’s actions as stressing that he was a councillor to ensure that the matter was dealt with properly, as he saw it. The councillor was entitled, as a member of the public, to have a noise nuisance complaint dealt with and would have had it dealt with had he simply given his home address. The advantage that it is said he sought was therefore merely to be excused from giving details of his home address to the operator (he did subsequently supply his home address to the noise nuisance team). He could not be accused of seeking to have a complaint dealt with as a councillor which would not be dealt with for a member of the public. On the balance of probabilities therefore and taking into account the onus to prove the allegation lies with the Investigating Officer it is the view of the Investigating Officer that there has been no breach of paragraph 5 of the Code.

9. ADDITIONAL COMMENTS IN RESPONSE TO DRAFT REPORT

- 9.1 In this case the Investigating Officer decided that it would be appropriate to prepare a draft Report and submit that Report to the complainant for their observations. In response to that invitation Councillor Hussain wrote to the Investigating Officer. A copy of his letter is attached at page 57 of the Bundle.