

## **ESTABLISHING THE FACTS**

In opening this Agenda item, the Chairman reminded the parties that the determination was only concerned with one thing - the behaviour of Cllr Brazil on 11 June 2008. Save as they might reflect on his behaviour then, the parties were not concerned with other events especially ones in which the Complainant might have been involved.

In the room only two people know of the precise nature of the investigation - the Complainant and Ms Hefford. All it is necessary to recognise is that the relevant departments had identified a need for an investigation and it had been put in hand. Attention was drawn to the letter of 2 July 2008 (C9) which recognises that the letter of 4 June does refer to 'benefit claims' in the plural but the Committee are of the strong opinion that this discrepancy would have had no effect in altering the events of 11 June.

What therefore took place at the Frogmore Bakery, Frogmore near Kingsbridge on the 11 June 2008 between approximately 3.20 and 4.15 in the afternoon?

There is no dispute between the parties that there had been a previous contact between Mr Roberts and the Complainant or that Mr Roberts had co-operated as required at that earlier stage by producing required documentation. The letter proposing the meeting on 11 June (C2), and advising that she might be accompanied by other officers, was in standard form sent by the Complainant on South Hams District Council letter heading. Whilst Leading Counsel for Cllr Brazil seemingly sought to argue that a letter in which additional information such as the time and date of the meeting was not a standard letter the Committee considered his argument had no relevance to the events of the afternoon. The Committee had no doubt that the letter was in proper form and the Complainant was duly authorised to sign it and she and Ms Hefford were duly authorised to conduct the investigation.

Mr Roberts only received the letter on the morning of 11 June having been away for the weekend. He was surprised by the letter as he was under the impression that having co-operated fully in the production of the required documentation his part in the investigation was over. Mr Roberts was concerned by the apparent widening of the enquiry and to have been unduly shocked by the warning spelling out the consequences of non-compliance, namely the possibility of criminal proceedings if he did not co-operate, which he described as a 'threat'. Arguably 'unduly shocked' as

many official documents in common use give such a warning (the counterpart driving licence and the need to make a SORN statement are two examples) and the need to warn of possible penalties is mandatory in many documents. In cross examination Cllr Brazil conceded that it was reasonable to put such a warning in an official letter.

Despite the Bakery's records not being available at that time, Mr Roberts decided not to telephone the Complainant to explain the situation and take advantage of the availability of an alternative appointment to give himself a breathing space. His reasoning being that he was unhappy as to the manner and content of a previous telephone conversation he had had with her. Instead he contacted his trade association the Federation of Small Businesses and sought its advice. The recommendation he received was to contact either his local or national political representative.

As Cllr Brazil was both his District and County Councillor and a regular customer in his shop he contacted him. During their telephone conversation Cllr Brazil volunteered that he had encountered the Complainant 'in action'. Precise details of what Cllr Brazil actually said are unknown to the Committee but clearly, as he makes reference to it at Para 4 in document D2, that was the specific incident he had in mind. Also he probably had in mind the reports of which he spoke of in cross examination. Despite the short notice, he was prepared to attend the meeting at the Bakery and subsequently telephoned the Monitoring Officer leaving a message on her answering machine. The Committee was not informed of the content of this message but in the circumstances of the investigation query whether this would have been the appropriate person to contact at this time in connection with this matter.

The Complainant, accompanied by Ms Hefford a benefit fraud investigator from the Department for Work and Pensions, this being a joint investigation, arrived at the Bakery a few minutes early at approximately 1520 hrs their progress along the notoriously slow Kingsbridge - Frogmore Road having been unexpectedly swift. Paragraph 4.4 on page D 5 claims that arriving early for the appointment demonstrates the Complainant's lack of respect for Mr Roberts from the outset. The Committee dismissed this as a nonsensical allegation. Punctuality is said to be the politeness of princes and it is usually recognised that courtesy demands that business appointments are reached in good time so that they may start punctually. Furthermore, it was open to Mr Roberts to excuse himself until the appointed time.

The ten minutes before Cllr Brazil arrived appear to have been amicable with the parties beginning by shaking hands, save that there appears to have been ambiguity between Mr Roberts and the two investigators in that the letter of the 4 June clearly stated that they wished to inspect "your records" but Mr Roberts did not seem to appreciate what this meant.

Mr Roberts explained he had not received the letter of 4 June until that morning through being on holiday. On two occasions during this time Mr Roberts was offered the opportunity of re-arranging the appointment because the Bakery's records were with the book-keeper but he declined. During this period Ms Hefford gained the impression that Mr Roberts was being evasive speaking at length about the history of the Bakery. This led to Ms Hefford alleging in her statement that she and the Complainant were 'set up'. It is understandable why she should have reached this view bearing in mind that during the ten minutes Mr Roberts never mentioned he was expecting Cllr Brazil or explained why he was avoiding the subject matter for which the meeting was called. He was clearly stalling. When cross-examined on this point Mr Roberts admitted frankly that he had never thought of mentioning Cllr Brazil was expected. The Committee found this explanation very surprising in the circumstances but drew no conclusions from it.

In determining what happened when Cllr Brazil arrived there are various sources available to the Committee:

1. The original complaint
2. The statement of the Complainant
3. The statement of Mr Roberts
4. The statement of Cllr Brazil
5. The statement of Linda Cope
6. The additional information provided by the Pre-Hearing
7. Correspondence Mr Incoll/Cllr Brazil
8. Correspondence Mr Roberts/Mr Incoll/Ms Hayward
9. The oral evidence of Mr Miles, the Complainant, Ms Hefford, Cllr Brazil, Mr Roberts
10. The Investigating Officer's Report

The contents of the report were accepted by the Committee as to factual matters, save where they are specifically corrected in this document.

It is appropriate to mention at this junction that the apparent thrust of much of the additional information provided by Cllr Brazil at the Pre-Hearing concentrates on the alleged conduct of the Complainant both in this matter, a previous incident and an incident dated after 11 June seemingly to provide a defence or justification for his behaviour. The Committee makes it quite clear that in the context of the alleged breaches of the Code of Conduct this approach has absolutely no place. The Code is the Code and is there to be observed, whatever the circumstances faced by a councillor, and sets out clearly defined boundaries to be observed. To confirm the matter it should be emphasised that there appears to be no substantive evidence regarding the alleged previous incident other than Cllr Brazil's allegations and no complaint was formulated or considered.

Returning to the evidence, the Committee decided that it was not appropriate to take account of Linda Cope's evidence contained in her written statement. There is no doubt that the evidence of an independent third party would have been of assistance to the Committee. However, she was not available to be called and had in fact declined to attend the determination. There appeared to be a possible contradiction between the contents of paragraphs 4 and 5 of her statement (D18) which before acceptance of her evidence needed to be resolved by cross-examination and which might nullify the value of that evidence. Furthermore, Mr Roberts in his evidence described the somewhat convoluted shape of his shop being divided by a staircase which might, again in cross-examination, have further devalued her evidence.

In cross-examination, the Complainant volunteered that much of the wording of her complaint had been directly taken from her virtually contemporaneous notes recorded in her notebook shortly after 1615 hrs on 11 June. Ms Hefford's statement was also based on her notes made at the same time. Both are investigators of great experience used to recording and then giving evidence in various fora. In consequence, it is not to be expected that they would exaggerate events even though they were personally involved. In cross-examination, Leading Counsel did obtain an amendment from the Complainant as to the precise circumstances in which she felt 'threatened' but the Committee were of the opinion that overall her evidence remained intact as did that of Ms Hefford.

Mr Roberts' statement is dated 6 November 2008 but it is recognised that he raised some of the issues in his statement in a letter to Mr Incoll of 16 June 2008 (C5). He

makes no mention of the three offers to re-arrange the appointment of which he did not take advantage. In his signed statement he says that Cllr Brazil was 'direct and forceful' on arrival and the Report adds that when he was interviewed he said Cllr Brazil was 'loud on occasion, enthusiastic and ebullient' and also takes the view that he was more 'hot air' than intimidation and 'acting out of bluster and bravado'. However, he provides no recollection of anything Cllr Brazil said about the Complainant's employment and associated matters other than Cllr Brazil claiming to be the Complainant's "boss". He claims to have been intimidated by the Complainant and Ms Hefford which the Committee found surprising as for ten minutes their conversation centred on the history of the Bakery and after that Mr Roberts had Cllr Brazil to support him.

The evidence of Cllr Brazil and his comments upon his behaviour, especially his denial of the various breaches of the Code, must be viewed circumspectly. It is quite clear that he had an adverse opinion of the Complainant partly gleaned from information from persons some of whom accused of benefit fraud as admitted in cross-examination. Whilst it is accepted that his primary objective in attending the meeting was to support a constituent, something which is part and parcel of his duties as a councillor, he clearly pre-judged the issues by volunteering his views of the Complainant to Mr Roberts on the telephone. Seemingly, he also saw the circumstances of this case as giving him an opportunity to challenge the waste of taxpayers' money on the investigation of benefit fraud. It emerged in evidence that in the South Hams only one investigator is employed and this at a time when, according to Mr Incoll the Government is urging local authorities to take further steps to minimise benefit fraud.

It is quite clear that the atmosphere changed dramatically on Cllr Brazil's arrival. Mr Roberts says Cllr Brazil was direct and forceful'. It appears that his conduct effectively limited anything profitable coming out of the meeting.

In cross-examination, Cllr Brazil freely admitted that he had not received training or even troubled to read either the Codes of Conduct of the South Hams District Council or the Devon County Council, of which he is also a member, nor read the protocol of the latter dealing with the relationship between councillors and council officers. His excuse that he has always been too busy is totally unacceptable as the Code is central to the manner in which councillors perform their duties. Arguing, as he did, that he

must be doing things right as his majority had risen at the last District Council elections from four to four hundred is no excuse for operating outside the Code.

The question was raised on the protocol because South Hams District Council are in the process of adopting the same protocol, amended for District use, and had Cllr Brazil been aware of the Devon version he would have been aware of the manner in which to conduct himself on the afternoon of 11 June. It is difficult to see how Cllr Brazil can express a view that he did not breach the Code by intimidation, bullying or in other ways when he has not troubled to discover the boundaries outside of which he must not stray.

Cllr Brazil did not address himself to the nature of the support which he could properly give to Mr Roberts in an interview governed by statutory powers being used by duly authorised officers. It is said in the Report (A8 Para 5.4) that 'Cllr Brazil is adamant that he was acting in the best interests of Mr Roberts, who was happy to let Cllr Brazil take the lead during the visit'. The underlined words indicate that Cllr Brazil overstepped the boundary at the interview by taking the lead rather than just supporting.

In determining which version of events to accept the Committee is working to a level of proof based on the balance of probabilities. It is recognised by the Committee that Leading Counsel in cross-examining Mr Miles on the report highlighted a possible lack of balance in one or two areas and minor deviations from the recommended format for an Investigation Report but, having had these drawn to its attention the Committee has taken them into account in its deliberations.

In establishing the facts, the Committee accepts the evidence of the Complainant and Ms Hefford as providing a sufficiently accurate version of events to satisfy the standard of proof. It is not necessary to analyse the precise circumstances in which each of the individual expressions relating to the Complainant's employment were used by Cllr Brazil. The Committee is satisfied that those remarks recorded by the Complainant and Ms Hefford were made by Cllr Brazil. It is not believed that an employee at the Complainant's level in the Council is likely to know precisely, if at all, what influence or decision-making function an individual councillor might have therefore it is understandable that the Complainant felt 'threatened'.

A further factor noted by the Committee that Cllr Brazil realised he might have overstepped the mark on 11 June was his recognition in his letter to Mr Incoll dated 6 July 2008 (A19) that his behaviour might have appeared threatening to the Complainant and his request that his apologies be passed on. Furthermore, he 'signed off' the Report on 29 November 2008 accepting its contents amended as he had requested. The Committee also took into account the demeanour of the various witnesses when giving evidence. The Committee was surprised by Cllr Brazil's attitude when challenged with regard to his failure to read or receive training on the Code. Also his views on the relationship between councillors and officers, which he expressed with some force, were contrary to the understanding of the Committee.

The Committee was unanimous in its view that the conduct of Cllr Brazil could not be dismissed as 'meeting fire with fire' or giving the Complainant 'a taste of her own medicine' which, in any event, would have been inappropriate and exceeded being 'direct and forceful' descending into bullying.

The Committee accepts that the Complainant was reduced to physically shaking by the behaviour of Cllr Brazil. Mr Roberts dismisses this in that he saw no evidence of physical distress before the Complainant left the shop. The Committee recognised that reactions to a traumatic experience can take time to kick-in.

## **Relating the Essential Facts to the Alleged Breaches of the Code**

### **3(1) You must treat others with respect**

It is quite clear that from the moment Cllr Brazil arrived in the Bakery from an opening sarcastic remark to the subsequent comments he made that he had no intention of being courteous to the two investigators. There is no evidence from his language that he had any intention of attempting to assist his constituent in achieving an acceptable solution to the problem acceptable to all parties, bearing in mind that the two investigators were acting under statutory powers. His objective appeared to be to browbeat them (he describes it as meeting fire with fire and giving her a taste of her own medicine) into terminating their investigation.

### **3.(2)(b) You must not bully any person**

A fact sheet (A24) was provided with the Report setting out the key factors regarding bullying. Much was made at the hearing that no violence or bad language was used by

Cllr Brazil but bullying does not require either of these elements. Bullying can be silent as in sending someone to Coventry or by a sneer or look of contempt when the victim passes. The appearance of internet bullying demonstrates the many forms bullying can take. Whilst the Standards Board has defined a test for bullying (The Case Review 2007 paragraph 3 page 30) there is a need to look at the circumstances of each individual case. For example, what an outsider might perceive as bullying within an observed group might to all its members be no more than a robust form of teasing and part of their accepted culture. The 'notional reasonable member of the public' test applied by the Committee is enhanced here because the person who was the subject of the bullying was in a job where vigorous and unpleasant verbal confrontation can be part and parcel of the daily round. Given the nature of the investigator's work and experience, credibility must be given to any assertion that the complainant was bullied. It is not appropriate to regard Mr Roberts' perception of the situation as that of a notional member of the public, as he was an involved party and inevitably because Cllr Brazil's efforts were to support him must be regarded as wholly subjective. Nor would he have the knowledge of Council structure to determine how hurtful the comments were. The Report in Para 7.3 (A8) lists some examples found by the Investigating Officer but the evidence of the two investigators show that everything from Cllr Brazil's tone of voice to his body language was aggressive and amounted to bullying.

**3.(2)(d) You must not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.**

All the evidence points to the fact that Cllr Brazil, besides supporting his constituent, had his own agenda. His whole approach from his questioning the validity of the investigation to challenging the investigators' authority indicates that, whatever he was told, he had made up his mind and his intention was to compromise the impartiality of the investigators by bringing the investigation to a premature conclusion.

**5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.**

Having a stand-up row in the middle of a shop with a member of the Council's staff with the public present can hardly be said to be behaving in a reputable way.

The Committee unanimously finds that Cllr Brazil was acting as a Councillor, a fact he accepts (Report Para 4.24 Page A(6) in connection with this incident and that he breached the provisions of the Code listed above.