

**South Hams
District Council**

Case Reference: SH04/170708

Report of an investigation under Section 59 of the Local Government Act 2000 by Colin Miles appointed by the Monitoring Officer for South Hams District Council into an allegation concerning Councillor Julian Brazil of South Hams District Council.

FINAL DRAFT

DATE: 01 December 2008

1 Executive summary

- 1.1 On 17th July 2008 a complaint was made that Cllr Brazil challenged the way the Complainant, who is an officer of the District Council, was carrying out an enquiry in the course of her duties by saying that it was a waste of taxpayers' money and a disproportionate action, aggressively questioning the officer's statutory rights to pursue such an enquiry, and saying that he would be looking into the status of her job, in a manner that the officer found offensive, threatening and intimidating.
- 1.2 The enquiry concerned an allegation of benefit fraud by an employee or worker at the Frogmore Bakery, Frogmore, near Kingsbridge.
- 1.3 On the 9th September 2008 the Standards (Assessment) Sub-Committee referred the allegations to the Monitoring Officer for investigation.
- 1.4 The relevant paragraphs of the Code of Conduct, adopted in April 2008, which have been forwarded by the Assessment Committee, can be found at paragraph 3 of this report.
- 1.5 The writer submits that Cllr Brazil has breached the following paragraphs of the Code:
 - 3.(1) You must treat others with respect
 - 3.(2)(b) You must not bully any person
 - 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
 5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute

2 Councillor Brazil's official details

- 2.1 Cllr Julian Brazil was elected to office to represent the Salstone Ward on 3rd May 2007 for a term of four years. He is also a member of the following other relevant authorities: Devon County Council and Chivelstone Parish Council.
- 2.2 Cllr Brazil currently serves on the following committees: The District Council, Development Control, Prosperity Policy Development Group and is the Chairman of the Salcombe Harbour Board.

- 2.3 Cllr Brazil gave a written undertaking to observe the Code of Conduct on 8th May 2007, a copy of which is attached to this report at page 12.
- 2.4 There are no records that show Cllr Brazil has received training on the new Code of Conduct, although opportunities have been offered.

3 The relevant legislation and protocols

- 3.1 The council has adopted a Code of Conduct, as attached to this report at pages 13 - 15, in which the following paragraphs are included:

- 3.(1) You must treat others with respect
- 3.(2)(b) You must not bully any person
- 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
- 5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute
- 6.(a) You must not attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage

4 The evidence gathered

- 4.1 The writer has taken account of oral evidence from Mrs Chris Butterfield, Ms Jess Hefford, Cllr Julian Brazil and Godfrey Roberts.
- 4.2 The Complainant, **Mrs Chris Butterfield**, was interviewed on 14th October 2008 and would like to add to her original written complaint (attached to this report on pages 16 - 17), the following:
- 4.3 "I have been investigating benefit fraud for the last 28 years, the last two years as an investigator for the council. During this time, I have never experienced such a level of intimidation and threatening behaviour as I did when I visited the bakery. On leaving the premises I was physically shaking.
- 4.4 I honestly believe that Jess and I were set up by Mr Roberts and Cllr Brazil. We arranged to see Mr Roberts at 3.30pm but arrived 10 minutes early. We tried to commence the interview but Mr Roberts was evasive and trying to stall the interview, as he seemed reluctant to answer questions and wanted to talk about the history of the business

and the method of book keeping. At 3.30pm, Cllr Brazil entered the shop.

- 4.5 Mr Roberts introduced Cllr Brazil using the title "Councillor". Cllr Brazil gave the impression that he was aware of the circumstances surrounding the visit and at no time did he say that he was there as a private individual, and not in his official capacity. This was reinforced by his later comment that "he employs me." Also, Mr Roberts stated that Cllr Brazil "knew all about it". I can only conclude that Cllr Brazil was acting as a Councillor.
- 4.6 The interview was terminated by us at about 4.00 pm as we were getting nowhere and the situation was getting out of hand. Unfortunately, we had to return a few minutes later as Jess had left her notebook and papers. We wrote-up our notebooks at about 4.15pm on the same day".
- 4.7 On 24th October 2008 I interviewed **Ms Jess Hefford**, who says:
- 4.8 "I am a Benefit Fraud Investigator employed by the Department of Works & Pensions, and have been so employed for about 28 years. I consider myself to be a very experienced investigator, having undertaken many investigations and given evidence on oath in the Crown Court, the Magistrates' Court and in various Tribunals. I am authorised to conduct such investigations under section 109 of the Social Security Administration Act 1992.
- 4.9 On 11th June 2008 in the company of Mrs Chris Butterfield of South Hams District Council, as part of a joint investigation, I visited Mr Roberts of Frogmore Bakery, village store and post office, Frogmore, near Kingsbridge. Mr Roberts is known to have day to day control of the premises.
- 4.10 We arrived at about 1520 hrs for a 1530 hrs appointment. Mr Roberts stated that he had just received our letter as he had been away on holiday. He also stated that his book-keeper had all the paperwork for the business. We offered to rearrange the appointment for a time when he was in possession of the documentation.
- 4.11 He said he was happy to go ahead but I felt he was evasive as he did not want to talk about the reason why we were there. He spoke at length about the history of the bakery.
- 4.12 At about 1530 hrs, I was aware that a male had entered the shop, who I thought was a shopper until he was introduced to us by Mr Roberts as "Councillor Julian Brazil". Cllr Brazil asked to see our ID cards and then wrote our names down in a notebook. Cllr Brazil then proceeded to discuss the reasons why we were there. We were reluctant to discuss these matters but Mr Roberts said that the Councillor "knew all about it". Cllr Brazil said that "this was a small rural business and our

approach was too hard". He also said that "I bet you came here in two cars. This is all a waste of taxpayers' money". I concluded that Mr Roberts had been waiting for Cllr Brazil and that he wanted Cllr Brazil to deal with the interview.

- 4.13 Chris asked Mr Roberts if he would like to rearrange the appointment, he said that he did not. I felt that Cllr Brazil was being aggressive, intimidating and I was feeling very uncomfortable at this stage, not only for myself but for Chris, who was the focal point for Cllr Brazil. Members of the public were coming and going from the shop and I believe that they were aware of this uncomfortable situation. Cllr Brazil said that our actions were disproportionate for a small amount of money and asked if we do this in all cases. I answered that we deal with each case individually.
- 4.14 I emphasised that we were empowered to seek information regarding PAYE details and produced definition leaflets of what is an employee and what is a worker. There were some discussion about obtaining information from computer records and the Data Protection Act.
- 4.15 Cllr Brazil said "When this is all over and nothing is proved, I am going to complain to the Ombudsman". He also referred to Chris' employment status and said that he "would be looking into it". Chris replied "You are being personal about something else that has gone before". Cllr Brazil replied "I bet you think you are very clever".
- 4.16 I noticed that Chris was shaking and physically upset. I considered that at this point the situation had worsened to such an extent that the interview should be terminated. We rearranged to see Mr Roberts another day, but on advice from senior management, the investigation has been suspended.
- 4.17 I have no doubt whatsoever that Cllr Brazil was acting in an official capacity as a District Councillor. This is affirmed by his references to Chris' employment status and her behaviour towards him. At no stage did he say he was at the shop representing Mr Roberts in a private capacity. Also, his attitude and demeanour gave me the impression that he was acting officially.
- 4.18 I can say without hesitation that I have never witnessed such aggressive and intimidating behaviour during an investigation, and have never felt so concerned and uncomfortable. In the shop, I believed that Chris' job may be under threat because of what was happening.
- 4.19 On our return to the car, we recorded the events whilst they were fresh in our minds, in our notebooks. It took a while for Chris to stop shaking and calm herself. I have reported the incident to my superiors at DWP who have recorded the details in one of our event logs as it is considered that Cllr Brazil is "Potentially Violent".

- 4.20 On 24th October the writer interviewed **Cllr Julian Brazil**, who says:
- 4.21 "On the 11th June 2008 at Mr Roberts' business premises I considered myself to be acting in an official capacity.
- 4.22 Mr Roberts sought my assistance in this matter as I am his District Councillor. Mr Roberts runs a small business in a rural area and as far as I am aware is a law abiding citizen with no history of committing benefit fraud or assisting in the commission of benefit fraud.
- 4.23 Mr Roberts had previously been asked for wage slips which he sent to the investigators. He only employed the person subject to the investigation on two occasions. I believe that the officers arrived "mob handed" and their actions were disproportionate to any alleged offence, and disproportionate in dealing with Mr Roberts over such a minor infringement.
- 4.24 The letter sent to Mr Roberts was on SHDC headed paper and as an elected member, I was acting officially by virtue of "*ex officio*". I was very unhappy with the tone of the letter and by being present and wishing to see the books, effectively, they were saying that Mr Roberts was dishonest. As a Councillor, I was very unhappy with this. I believe that the officers were intimidating and bullying Mr Roberts. I was standing up for him against their unacceptable manner, there is a still a presumption of innocence. I believe that the officers were abusing their position and wasting the taxpayers' money.
- 4.25 I made a complaint against Mrs Butterfield but this has not gone anywhere. I made this complaint shortly afterwards. I did receive a letter from the Benefits Manager, prompted by a letter written by Mr Roberts, (attached to this report at page 18), which states that there were no grounds to uphold the complaints made by Mr Roberts. I have also received letters from the David Incoll, the Chief Executive (attached to this report at pages 19 - 20).
- 4.26 Also, I did leave a message on the answer-phone of the Monitoring Officer shortly after the visit to the bakery, but have not heard anything. I was asked to write an apology which I have done (attached to this report at page 21). I accept that during such incidences that emotions run high but I am very passionate about such things as abuse of position and power, and disproportionate reactions when dealing with minor infringements, the very nature of this investigation is one of the reasons I became a councillor.
- 4.27 I have had previous dealings with Mrs Butterfield and am aware of her style of investigation technique and met "fire with fire". I believe that I only gave her "a taste of her own medicine".

- 4.28 On 6th November 2008, the writer interviewed **Godfrey Roberts**. Mr Roberts prepared a statement which is attached to this report at pages 22 – 24. He wishes to add the following to his statement:
- 4.29 “Cllr Brazil acted without any physical aggression but was loud on occasion, enthusiastic and ebullient. He did not swear or blaspheme, and certainly did not insult the officers. To me, he appeared to act more with “hot air” than intimidation. I did invite him to attend and act or advise me as I took the implications very seriously. As far as I was concerned, I had sent all the relevant information to the officers. The bakery only delivers about two mornings a week, four Thursdays and two Saturdays a month. The person in question who prompted the investigation only covered for my absence for two deliveries. This information had previously been passed to the investigators.
- 4.30 I explained to the officers that the paperwork was not at the bakery as my book-keeper held the books and I had only recently read the letter informing me of the visit. I did not believe that the tone of the letter was acceptable, nor do I accept that the officers are required to see all my books and sift through all the information therein. If Cllr Brazil was not in attendance when the officers visited, the outcome would have been the same.
- 4.31 In using the term “boss”, I think that Cllr Brazil was acting out of bluster and bravado and I am surprised that the officers attached any weight to the term.
- 4.32 Finally, given the nature of the officers’ occupation, I am surprised that they have made such complaints, and I would have thought they should have thicker skins and be a bit tougher. In their occupation, they must have been on the receiving end of far worse than this”.

5 Summary of the material facts

- 5.1 There is no doubt as to the facts as all parties seem to agree to what actually took place on 11th June 2008 at Frogmore Bakery. The officers were trying to investigate an alleged benefit fraud and wanted to see the employment records kept by Mr Roberts for his bakery and shop. The necessary paperwork was being held by Mr Roberts’ book-keeper. He had only received the written request to view the books shortly before the visit as he had been away.
- 5.2 The officers were happy to make another appointment when the records would be available, and this was agreed.
- 5.3 Cllr Brazil by his own volition and the impression he gave, was acting in his official capacity as a District Councillor, therefore the Code of Conduct applies.

- 5.4 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.
- 5.5 Records held by the Monitoring Officer indicate that Cllr Brazil has not undertaken training under the new Code of Conduct.
- 5.6 A letter of apology has already been written by Cllr Brazil.
- 5.7 Cllr Brazil and Mr Roberts have made complaints concerning the officers, but these complaints have not been upheld.

6 Cllr Brazil's additional submissions

- 6.1 By telephone on 28th November Cllr Brazil made one correction to the report which has been incorporated into his comments.

7 Reasoning as to whether there have been failures to comply with the Code of Conduct and Finding

- 7.1 On the balance of probabilities, the writer believes that Cllr Brazil acted beyond what may be considered as acceptable for a District Councillor in these circumstances. It must be said that he was acting in the interests of a member of the electorate and holds strong views as to the validity of the officers' actions and the investigation itself.
- 7.2 Evidence suggests that Cllr Brazil adopted a position that was disrespectful to the officers (para 3.1 of the Code), by making comments in an aggressive manner, such as "this is a waste of taxpayers' money" and "I bet you came here in two separate cars". Such comments are confrontational.
- 7.3 The Standards Board have issued a factsheet on bullying in relation to the Code of Conduct (attached to this report at page 25). Within this factsheet, "bullying can be described as intimidatingoffensive.....behaviour, towards someone weaker than you or someone you have, or believe to have, influence over". By saying that he "employs" the complainant, and "will be looking into the status of your job", the writer believes that the threshold for bullying (para 3.(2)(b) of the Code) has been met. Also the factsheet states that bullying may happen once, or be a pattern of behaviour.
- 7.4 Evidence suggests that Cllr Brazil attempted to compromise the impartiality of the officers conducting the investigation. Cllr Brazil's forceful manner indicates that his approach to the investigation went beyond questioning the validity of the investigation and was an open challenge to the officers' authority. Cllr Brazil, whilst acting for Mr Roberts, is perfectly entitled to seek clarification regarding the officers' legal authority, however, it is the manner in which he sought such clarification in a public place, which the writer believes is a breach of para 3.(2)(d) of the Code.

- 7.5 The officers have stated that they felt Cllr Brazil was intimidating, threatening, aggressive and acting in an unprofessional manner. Mr Roberts states that Cllr Brazil was loud, enthusiastic and ebullient. Given the stance adopted by Cllr Brazil, which he acknowledges, and the circumstances of a public place, the writer is satisfied that Cllr Brazil has brought his office into disrepute, a breach of para 5 of the Code.
- 7.6 The writer is satisfied that there is no evidence to suggest that Cllr Brazil was attempting to secure an advantage or disadvantage for himself or another (para 6.(a) of the Code).

Colin Miles
Investigating Officer
South Hams District Council

Appendix A

1. Written undertaking to observe the Code of Conduct, page 12
2. Code of Conduct adopted by South Hams District Council (paras 1 – 7) pages 13 - 15
3. Written complaint by Mrs C Butterfield, pages 16 - 17
4. Letter from the Benefits Manager to Cllr Brazil dated 14th July 2008, page 18
5. Letter from David Incoll, Chief Executive to Cllr Brazil dated 30th June 2008, page 19
6. Letter from Cllr Brazil to David Incoll dated 6th July 2008, page 20
7. Letter from David Incoll, Chief Executive to Cllr Brazil dated 27th October 2008, page 21
8. Statement by Godfrey Roberts dated 6th November 2008, pages 22 - 24
9. Factsheet produced by the Standards Board on "Bullying", page 25

Local Government Act 2000 (Sections 51 and 52)

Section 83 Local Government Act 1972 (as amended by above)

**The Local Authorities (Model Code of Conduct) Order 2007
(as amended by South Hams District Council)**

**FORM OF DECLARATION OF ACCEPTANCE OF OFFICE AND
UNDERTAKING TO OBSERVE THE AUTHORITY'S CODE OF
CONDUCT**

Declaration and Undertaking

I Julian Charles Brazel having become a member/~~co-opted member~~ (~~delete as appropriate~~) of South Hams District Council, declare that I will duly and faithfully fulfil the requirements of this role according to the best of my judgement and ability.

I undertake to observe the code as to the conduct which is expected of members/~~co-opted members~~ (~~delete as appropriate~~) of South Hams District Council.

Signed: J. Brazel

Dated: 8th May 07

This undertaking was made and signed before me

Signed: Ruth Bagley

Dated: 8/05/2007
Proper Officer of the Authority

SOUTH HAMS DISTRICT COUNCIL
CODE OF CONDUCT FOR MEMBERS (2007)

1. (1) This Code applies to **you** as a member of an authority.
 - (2) You should read this Code together with the general principles prescribed by the Secretary of State.
 - (3) It is your responsibility to comply with the provisions of this Code.
 - (4) In this Code—

"meeting" means any meeting of—

 - (a) the authority;
 - (b) the executive of the authority;
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;
 - (d) informal meetings with other members or officers or both relating to the discharge of the authority's functions

"member" includes a co-opted member and an appointed member.

2. (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—
 - (a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

 - (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.
 - (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
 - (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

- (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
- (b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. (1) You must treat others with respect.

(2) You must not—

- (a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
- (b) bully any person;
- (c) intimidate or attempt to intimidate any person who is or is likely to be—
 - (i) a complainant
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority;
- (e) provide or offer to provide a reference for any candidate for appointment or promotion as an officer of the authority.

4. You must not—

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

- (iv) the disclosure is—
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.
6. You—
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of your authority or resources which are or whose use is controlled or influenced by the authority —
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—
- (a) your authority's chief finance officer; or
 - (b) your authority's monitoring officer,
- where that officer is acting pursuant to his or her statutory duties.
- Alternate provision (see para 7.4 of the report) to replace 7(1) above:
- (2) "When reaching decision on any matter you must –
- (a) do so on the basis of the merits of the circumstances and in the public interest;
 - (b) have regard to any advice provided to you by the authority's officers – in particular by –
 - (i) the Strategic Director for Resources (the s. 151 Officer) especially where that officer is acting pursuant to his or her statutory duties;
 - (ii) the Monitoring Officer, especially where that officer is acting pursuant to his or her statutory duties;

Back ground information

A case was raised on a claimant. A report was received at the DWP that claimant was employed by the Frogmore Bakery. This is a joint working case. As there was a named employer an Employer statement was sent to Frogmore Bakery on 22/05/2008. On 27/05/2008 a phone call was received from Mr Roberts of Frogmore Bakery. I returned the call Mr Roberts and he told me it was about the employer statement in relation to the claimant. Mr Roberts stated the position is ***** was never employed. He has worked twice in the last year and it was to cover other staff. He thought the letter and request was rather heavy handed. He stated that ***** had worked 31/01/2008 and 13/03/2008, these were Thursday mornings. I explained the difference between employed and self employed. Mr Roberts stated that ***** was a personal friend. I asked Mr Roberts to complete the form and he said he would suitably adapt it and return it to me with copies of wage slips. He then asked me who had reported him (*****) and how much can they earn someone in his (******) position before it affects his benefit. The employer statement was returned.

Discussed the case with Jess Hefford from the DWP and due to the phone call with Mr Roberts it was decided that a visit to the employer was required to inspect the records. A letter was sent for an appointment at 3.30 on 11/06/2008.

Incident

On 11/06/2008 at 15.20 Jess Hefford and I arrived at Frogmore Bakery. This is the local shop/post office and bakery. We both entered the shop and went to the back of the shop and asked to speak to Mr Roberts. He came out and Jess introduced herself and showed her ID which Mr Roberts checked. Jess introduced me and I showed my ID (certificate of appointment). Mr Roberts said "You were who I spoke to on the phone". We all shook hands. I then asked Mr Roberts if we could see his records, he looked a little taken aback so I asked him if he had got my letter, he said he had got it today as he had been away for the weekend. I suggested we could make another appointment if it was inconvenient. Mr Roberts then took us to the front of the shop which was by the front door. He then explained that he didn't want us to go into the Bakery because of Health and safety issues we said we totally understood and again offered to make another appointment. He then said he had had an inspection from the Council and that the bakery was the best in the area, and he has been advised that he should only allow those people connected to the bakery to go in. Mr Roberts then went on to explain that he had bought the business to protect it as it has been on the market for 18 months and the business was failing. There were various directors some relatives, the master baker and the post mistress. During the conversation a customer came in and we stopped. Mr Roberts explained that he didn't have any records at the bakery and that he had a bookkeeper who worked during the week and did the books for him and another local business in the evenings. When he finished with the papers he would put them in a box in the garage. Mr Roberts then indicated to a male who had just entered the shop and said "oh here is Julian my impression at that instant was this was someone connected to the business, as I could only see the back of him but as soon as he turned around I was aware that it was Cllr Brazil. Mr Roberts introduced him.

Cllr Brazil then asked Jess who she was, she explained and showed her ID and I showed him my ID. Cllr Brazil then wrote our names in his red notebook. Cllr Brazil then started saying this was a small rural business and all this for a small amount of money how we were wasting tax payers money and he'd bet we came in two separate

cars. Jess queried Data Protection in discussing this case and Mr Roberts said that Cllr Roberts knew all about it. Cllr Brazil then said in a rather threatening tone that "he employs me" He then became very dictatorial. I tried to explain that we had a duty to investigate to see if an offence had been committed or not. He then asked were our actions proportionate to the fraud. They both rather aggressively questioned our rights and I explained that we has rights in accordance with the SSAA Act 1992 and Jess also stated that we were empowered to ask for this information. Cllr Brazil said we were only interested in PAYE, Mr Roberts asked why we couldn't get the information from the Inland Revenue. Jess produced the leaflet Employer Information. We said we wished to see the records relating to all staff. Cllr Brazil wanted to know what a worker was Jess produced a definition of workers leaflet. Mr Roberts was also shown the reference to data protection as Cllr Brazil had queried this also. Cllr Brazil said that once this was all over and nothing is proved he would complain to the ombudsman. Cllr Brazil then said he would be looking in to the status of my job. At this point I said to Cllr Brazil that I thought was personal because of what had happened recently and Cllr Brazil replied "I bet you think you are very clever" Jess again suggested that we make another appointment when the shop was closed either a Saturday afternoon or after 5.30. I gave Mr Roberts my card and explained when I was not available.

I found Cllr Brazil attitude very unprofessional as he was attempting to belittle me in front of Mr Roberts and I also found him to very offensive, threatening and intimidating. When I got into the car I was shaking.

My DWP colleague has completed a Departmental form which classes Cllr Brazil as Potential Violent.

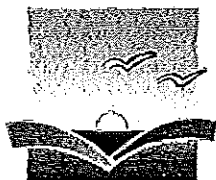
I believe that Cllr Brazil has not complied with The South Hams District Council code of conduct for members in the following ways

Para 3- He was a bully to both myself and my DWP Colleague
2b

Para 4b- He was preventing me obtaining information to which I was legally entitled pursuant to the Social Security Administration Act 1992.

Para 6a- By his threatening behaviour and giving me the impression that he had the power to affect my future employment.

Cllr Brazil was interfering in my lawful duties as an officer of the South Hams District Council



**South Hams
District Council**

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Telephone No: TOTNES (01803) 861234 Ext. 1606
Direct Fax No: 01803 861177
E-Mail: rev.bens@southhams.gov.uk

Cllr J Brazil
Crab Cottage
East Prawle
Kingsbridge
Devon
TQ7 2DA

Date : 14th July 2008

Claim Ref : JH PS
*(Please quote this number
in all communications)*

Dear Councillor Brazil

Frogmore Bakery , Frogmore, Kingsbridge

I write further to your request for an update regarding Mr Roberts' complaint.

A detailed reply has been sent to Mr Roberts on 2nd July 2008 regarding his complaint. The letter explained that there were no grounds to uphold the issues and complaints detailed in his letter.

I can also confirm that the joint investigation into the customer's benefit claim which led to the pre-notified visit to Frogmore Bakery is still ongoing. The investigation is currently with the Counter Fraud Intelligence Service at the Department of Work and Pensions awaiting a reply to some information that has been requested.

Should you have any queries regarding this matter, please do not hesitate to contact me.

Yours sincerely

Jane Hayward
Benefits Manager

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Please reply to: David Incoll, Chief Executive
Direct telephone: 01803 861363 Direct fax: 01803 866669
E-Mail: chief.exec@southhams.gov.uk

Councillor J Brazil
Crab Cottage
East Prawle
KINGSBRIDGE
Devon TQ7 2DA

Our Ref: CE/DJI/NR

30 June 2008

Dear Julian

Complaint regarding Frogmore Bakery

I would refer to our telephone conversation of this morning in which I explained that the member of staff involved, Miss Butterfield, had provided me with a statement regarding her visit to the premises with a Miss Jess Hefford of the DWP on 11 June 2008. Our employee felt that you addressed her in a threatening tone, pointed out that you employ her and that you would be looking into the status of her job. She found your attitude as belittling in the presence of Mr Roberts, the owner of the bakery, and felt that you were offensive, threatening and intimidating. She states that when she got back into her car she was shaking and continues to be worried and upset by the events.

I pointed out to you that you had made a complaint regarding the Council's approach in this matter and that you did not feel our actions were conducive to the survival of a small business. All these are proper matters of concern to a Councillor. However, it is not acceptable to threaten an employee in relation to their employment, or to leave them with the impression that that is what they are doing. It is interesting that a similar issue was shown in the DVD from the Standards Board that Members saw at Informal Council last Thursday.

I am therefore writing to request that you apologise for your behaviour in relation to this employee and make it clear that you were in no way seeking to suggest that her employment with the Council was in question, or indeed, that you had the right to decide such matters.

I look forward to hearing from you.

Yours sincerely

David Incoll
Chief Executive

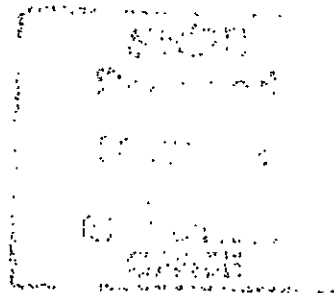
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Councillor Julian Brazil

Crab Cottage, East Prawle
Kingsbridge. TQ7 2DA
01548 511109

julian.brazil@devon.gov.uk



David Incoll
SHDC
Follaton House
Plymouth road
Totnes
TQ9 5NE

6th July 2008

Thank you for your letter of the 30th June in respect of a complaint by Mrs Butterfield following her visit to Frogmore Bakery. It was certainly not my intention to threaten Mrs Butterfield and if that was the impression I am happy to apologise for any misunderstanding. I should say that as an elected representative I am held responsible for actions of the District Council and this was the point that I was trying to impress.

You will understand that small rural shops are the lifeblood of our communities and as a local councillor it is my job to support them as much as I can. As you explained to me on the phone the revenue and benefits department works outside of the normal District Council remit but in the end their letters come on District Council headed paper.

I hope you can pass on my apologies to Mrs Butterfield and in the meantime I look forward to hearing from the department in respect of the Bakery.

Please reply to: David Incoll, Chief Executive
Direct telephone: 01803 861363 Direct fax: 01803 866669
E-Mail: chief.exec@southhams.gov.uk

Councillor J Brazil
Crab Cottage
East Prawle
KINGSBRIDGE
Devon TQ7 2DA

Our Ref: CE/DJI/NR

27 October 2008

Dear Julian

Thank you for your letter of 6 July 2008.

If I may just clarify one point please. What I said about "fraud investigatory work" is that we are working to Government directions. Indeed only yesterday a Committee of MPs called for local government to be tougher in investigating fraud and in bringing more cases to Court.

I am not, however, in a position to suggest that there has been fraud in this specific case.

Yours sincerely

David Incoll
Chief Executive

STATEMENT BY G D ROBERTS
6 November 2008

Background

Sat 24 May 2008	Letter dated 22/05/08 received by Roberts from Butterfield: Mr X captioned.
Tue 27 May 2008	Roberts telephoned Butterfield to explain her letter is OTT
Wed 28 May 08	Roberts mails response and copy pay-slips
Wed 11 June 08	Letter dated 4/06/08 received by Roberts from Butterfield: announces
	Visit of Butterfield et al to FBLtd 'to inspect your records'. Mr 'X' is not mentioned, but tone has gone from singular to plural.
Wed 11 June	Roberts telephones his Councillor Brazil to discuss the situation. Brazil offers to come to support Roberts.
Wed 11 June	1530 Hrs at FBLtd, Roberts meets Butterfield & Hefford then Brazil arrives
Sat 14 June	Roberts sends letter to Anthony Steen MP, complaining about the entire process and puzzled why the investigation has gone from singular to plural.
Mon 16 June	Roberts mails letter to Incoll, Chief Executive complaining that Butterfield has gone from singular to plural.
	Roberts mailed letter to Cllr Cane, Leader of the Council
Tue 17 June	Date of letter to Roberts from Incoll, nominating Winsor to 'look into' my query.
Wed 18 June	Date of letter response from Cllr Cane's secretary
Thur 19 June	Date of letter received by Roberts from Hayward who starts investigation of his complaint
Sat 5 July	Roberts receives letter from Hayward reporting on complaint; suspending the enquiries and apologising that 'the letter ...is a standard one which is always sent out in the form in which you received it. Although it refers to claims in the plural, at this stage of the enquiry the officers were confining themselves to an investigation of the person named in our letter of 25 th May. I apologise if this was not made clear in this letter.' She also wrote 'The letters that are sent have been worded by Department of Work and Pension solicitors and cannot be sent out with any of the legal text amended'.

Meeting in Shop on Wednesday 11 June 1530 Hrs

Present: CA Butterfield, J Hefford, Cllr J Brazil & GD Roberts.

Roberts arrived at FBL then Butterfield and Hefford. Following introductions, Roberts said: "let us be quite clear, you are here to discuss Mr X?"

Butterfield "Have you received my letter?"

Roberts "I received it this morning, having been away for the weekend. Did you receive my reply to your first letter?"

Butterfield "Yes"

Roberts "Please explain in what way you were dissatisfied with my response?"

Butterfield "We need to sit down and talk about that."

Butterfield then asked if we could go somewhere more private as we were in the shop itself with customers coming and going. I explained that there was nowhere; the bakery itself although empty is out of bounds because of health and safety issues. SHDC Environmental Health instructed the directors not to permit entry to people other than staff.

Around this time Cllr Brazil arrived and I introduced him to Hefford. He and Butterfield were already acquainted.

Brazil expressed his opinion that Butterfield and Hefford were wasting taxpayers' money in this investigation.

Brazil also told them firmly that he was Mrs Butterfield's "boss" because he is both District and County Councillor.

Eventually Butterfield said she wanted to see the records.

Roberts "Tell me which employee's records you want to see?"

Butterfield "We want to see the records."

Roberts "Do you know the names of any of our employees?"

Butterfield "We want to see the records"

Roberts told her that the records are probably with the bookkeeper.

Butterfield demanded "Who is he, where does he live and what does he do?"

Roberts answered her questions and she said she would need to make another appointment. Both women handed out business cards and they departed.

Comment by G D Roberts

On the morning of Wednesday 11 June I telephoned Cllr Brazil because I hoped he might have some insight into the way to deal with the investigation underway by Butterfield. It was a total surprise to find out he had encountered her "in action" in another case. He explained that she had clearly disbelieved my answers to her first letter and she had legal powers which she could use to investigate her suspicions. In gaining access the FBLtd's records she would see all of the employees' records and, in our case, invoices and names of suppliers, some of whom are firms local to the South Hams. I said that in our case she would find nothing out of order, because we strive to uphold the law and deal honestly in all of our dealings.

As you will see from my letter of complaint to Mr Incoll, I was concerned that 1) my personal integrity was being challenged by Mrs Butterworth, as I had provided all the information regarding the individual who was the subject of her first enquiry – and told her this 2) Ms Butterworth was either exceeding her authority as an investigative officer by looking into FBLtd's 'records' or did not understand the limits of her

powers 3) Mrs Butterworth did not understand the definition of 'employee' – I have liaised with my son on this point who is a solicitor and employment specialist who assures me that the terms of the individual's engagement did not constitute 'employee' status 4) FBLtd and potentially all of its employees, contractors, suppliers and customers might be drawn into whatever investigation Mrs Butterworth wished to pursue and this might have an extremely detrimental impact on the business.

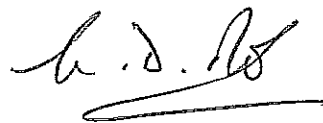
In hindsight I consider that these concerns were valid as the investigation was dropped following my complaint, therefore I understand that there was never any need for Mrs Butterworth to inspect the 'records' or visit FBLtd's premises.

I explained these concerns to Cllr Brazil who kindly offered to come to the meeting with his notebook in order to offer what support to me and the business he could.

At the meeting I found Mrs Butterworth and Ms Hefford determined and yet unable to explain the reason for their actions or the basis for their apparently vastly expanded investigation. I felt intimidated and as though I was being backed into a corner, though I still did not understand the purpose of what they were doing and challenged the validity of this. On arrival Cllr Brazil was direct and forceful (to match that of Mrs Butterworth and Ms Hefford) but at no time did he swear or blaspheme. There was never a time when he was at all physically or verbally threatening. He was simply forceful but always remained polite.

I was quite surprised that a complaint was raised against him because I did not feel that either Mrs Butterworth or Ms Hefford were upset when they left, nor was the meeting more heated than many which I have attended in my own career.

G D Roberts



6/11/08

factsheet

The Code of Conduct

 the
Standards Board
for England

9.

Bullying

Relevant Code paragraphs: 3(2)(b) and 3(2)(c)

Summary: This document provides key information and answers frequently asked questions about bullying under the 2007 revised Code of Conduct for members.

Date published: 1 October 2007

Key facts

- You must not bully anyone including other councillors, council officers or members of the public.
- Bullying can be described as offensive, intimidating, malicious, insulting or humiliating behaviour, towards someone weaker than you or someone you have, or believe to have, influence over.
- Bullying may happen once or be part of a pattern of behaviour.
- Bullying attempts to undermine an individual or group of individuals and it can have a damaging effect on a person's confidence, capability and health.
- You must not intimidate anyone who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings relating to a Code of Conduct investigation.
- Bullying can be contrasted with the legitimate challenges a member can make when questioning policy or scrutinising performance (as long as it is done appropriately and is not offensive or disrespectful).