

Appendix 1 – Complaint as received by Standards and Complaints, redacted to remove references to other matters.

complaints:

name: Holly Smith

address:

tel:

email:

wantsto: complaint

complaintcomment: I am writing to complain about the behaviour of some individual Councillors at the Full Council budget meeting on Thursday 3rd March in Brighton Town Hall. I was present in the public gallery for the entire duration of this meeting (some 6 hours) and some of the events and actions I saw absolutely appalled me. Rather than bore with you the order of events in time order, I will concentrate on each individual Councillor and the behaviours that I found inappropriate at best, unprofessional, undemocratic and hugely offensive at worst. It was a very long and tiring day, and we were not permitted to leave the building at any time to get food or drink (well, we were, but they said that if we did we would not be allowed to come back in again – why??) so I was very tired, hungry, and thirsty, so please forgive me if my memory is not 100% and I cannot remember exact quotations etc., yet I understand that this is broadcast on YouTube? So all events/comments I will be reporting will be available to check. I would first like to declare that this is not a party political issue

[REDACTED]

[REDACTED] Averil Older – when we first all came into the chamber right at the start of the meeting then Averil Older came up and stood directly in front of us and was taking photographs of the people sat in the gallery. A man sat in front of me objected to this and asked that she stop. She didn't. When he informed her that he was a law student and that he could bring a legal charge of harassment or breach of the peace then she laughed in his face. I find this incredibly disrespectful. I was sat in the row behind this student, therefore will presumably be in the photographs. I would like to know what she intended by taking these, and what she intends on doing with them. I recognise and respect the legislation surrounding photography freedom laws, however if the subject objects strongly and requests that the photographer stops or deletes the photos, then I understand there can be a harassment case here. Averil Older seemed to be deliberately trying to antagonise people and I am at a loss to understand her motive.

Appendix 2 - Ms H Smith Interview, 23 June 2011

**Present: Brian Foley, Investigating Officer
Ms Smith, Complainant**

- 1.0 Brian Foley opened the interview by describing the process for dealing with complaints about member conduct and what the potential sanctions can be if a member is found to have breached the code of conduct. It was pointed out that Averil Older is no longer a councillor, she did not stand for re-election in May 2011.
- 2.0 Ms Smith was invited to describe the circumstances of the complaint against ex-councillor Older.
- 2.1 Ms Smith drew a diagram to show that she and a group of five friends were seated directly to the left of the Chair in the front two rows of the gallery adjacent to the wall.
- 2.2 Ms Smith described how ex-councillor Older was striding around in front of the gallery. She was holding her phone out at nearly arms length. Ms Smith could not be certain if Ms Older was filming or taking individual photographs.
- 2.3 Ms Smith said that her friends were politely asking Ms Older to stop what she was doing but she did not. She kept standing there and was laughing.
- 2.4 Ms Smith said the sequence of events was as described in her letter of complaint. One of the group made it clear he objected to her behaviour and asked her to stop; Ms Smith said he told her he was a law student and that he could bring a charge against her.
- 2.5 Ms Smith said Ms Older laughed in his face.
- 3.0 The Investigating Officer asked Ms Smith if she could clarify exactly when this incident occurred. Ms Smith said she thought it was at the beginning but she could not remember precisely because of the time that has passed. Ms Smith was however pretty clear that it had been during one of the starts. Ms Smith commented that there had been many interruptions and the meeting kept stopping and starting.
- 3.1 Ms Smith said she thought there may have been an additional occasion when Ms Older took photographs when there were fewer people in the gallery.
- 4.0 The Investigating Officer asked Ms Smith for examples of how Ms Older had been antagonising people in the gallery.

- 4.1 Ms Smith was quite clear that Ms Older was antagonising people by ignoring their request to stop taking photographs and by laughing at the members of the public who made this request.
- 5.0 The Investigating Officer asked Ms Smith how she could be certain the person she was referring to was ex-Councillor Older.
- 5.1 Ms Smith explained that at first she and her friends did not know who the councillor was. However, they viewed the website and recognised Ms Older from her photograph.
- 6.0 Regarding the question of other witnesses. Ms Smith supplied the Investigating Officer names and addresses of the people she had been sat with. It was agreed that it would be helpful to have a short statement from some of those people but not necessarily all.
- 6.1 Ms Smith may contact her companions with a view to supplying the Investigating Officer with their email addresses. Those people may be invited to provide an additional statement. It does not at this stage seem necessary to interview them individually.

I confirm this is a true and accurate account

Signed

Date

Print Name

Appendix 3 – Statement in response to complaint

From: Averil Older [mailto:averil.older@googlemail.com]
Sent: 26 May 2011 12:25
To: Brian Foley
Subject: Complaintthere was an adjournm

Brian

I would like to refer to the first sentence of the complaint which has been made against me - 'when we first all came into the chamber right at the start of the meeting then Averil Older came up and stood directly in front of us and was taking photographs of the people sat in the gallery'.
This is simply not true and I would appreciate Holly Smith being asked why she has said this.

The one photo I took, which you have received a copy of, was taken towards the end of a long extremely disruptive meeting, when for about the seventh time there was an adjournment and the police were speaking to the members of the public in the gallery. I was asked to stop by someone and I did.
I think there were around a dozen people still there at this point.

I did not hear anyone mentioning they were a law student etc, I did not 'laugh in his face' as I did not find the situation at all funny but extremely serious when the business of the Council Budget setting cannot proceed with constant interruption from the public - which began within a few second's of the vicar's prayers before the meeting had even begun.

I am being asked what I have done with the 'photos' - the answer is nothing.

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Averil Older

Appendix 4 – Photograph submitted By Ms Older



Appendix 5 - Standards Complaints regarding Averil Older

Notes of meeting 15 July 2011 between Senior Lawyer, and Brian Foley Investigator.

The following pieces of legislation should be considered

- Public Order Act 1986
- Protection from Harassment Act 1997

1.1 It is acceptable to use cameras in public spaces however it is generally accepted that a person should not take photographs of individuals without their permission.

1.2 Pointing a camera in the face of a person may be deemed to be a nuisance. This may result in damages, an injunction or a restrictive order to stop the nuisance. However in the instance described this would probably not be actionable. This is because we are looking at a one of incident and a single photograph.

1.3 In a confrontational situation or a fraught meeting the use of a camera is likely to be seen as a form of harassment or nuisance. It is almost certainly provocative.

1.4 As an example: if such behaviour occurred in a tenant meeting it is likely there would be a warning that the conduct is unacceptable, inappropriate and inflammatory and that action would be taken if it occurred again.

1.5 The conduct may be perceived as an act of harassment if it is calculated to cause distress or if it is deemed to be oppressive by impact, this is a subjective measure based on what the recipient feels.

1.6 The legal view is that:

It is unlikely that a criminal charge would come about as a consequence of the described action. As a single act it would not sit comfortably as an action within the civil court regime. However, if the conduct had formed part of a repeated action that might have led to an arguable legal case.

Legal's experience in relation to ASB and nuisance (mainly housing) is that Judges repeatedly hand down warnings about the inflammatory nature of using cameras and other recording equipment as part of a dispute, this has included covertly hidden recording devices on the basis that the intention behind recording is to provoke a reaction.

I confirm this is an accurate record of my interview

Signed

Date