

1 Introduction

- 1.1 I was the Hearing Officer appointed to consider a number of allegations brought against Ian Barkley. The Disciplinary Hearing, which I chaired with support from Kathryn Pickford (HR Advisory Team Leader) took place on the 11th of May 2023. At this hearing, Margaret Warburton-Vaughan (Investigating Officer) presented the management case, supported by Julie Kippax (HR). Ian was unrepresented, and he confirmed he was happy to proceed with the hearing.
- 1.2 I considered the evidence presented by both parties and delivered my decision verbally and in a letter dated the 19th of May 2023, see [Section 2](#).
- 1.3 Ian appealed against my decision, via a letter dated the 24th of May 2023 detailed in [Section 3](#).

2 Background

- 2.1 Ian was employed as a Client Finance Officer in the Adult Social Care department of Oldham Council. He has worked for Oldham Council since August 2015 in various roles within the Brokerage Team and the Client Finance Team. His most recent position, since a restructuring process was concluded in December 2021, has been in the Client Finance Team.
- 2.2 A copy of his job description can be found in [Section 5](#).
- 2.3 During the hearing, management outlined the nature of the allegations investigated and the evidence gathered. The allegations against Ian, which were presented as Gross Misconduct were that he:
 - Demonstrated unacceptable attitudes towards other staff on the team and within management
 - Did not follow management instructions in a timely manner
 - Bullied and harassed two members of staff, resulting in two grievances being submitted, one from Kelsey Barnes and the other Sophie HarlandFurther details can be found in the management report [Section 5](#).
- 2.4 A decision was taken not to suspend Ian under the council's disciplinary procedures. However, during the course of the investigation, the relationship between Ian and his line manager continued to deteriorate, and therefore, the decision was taken to move Ian out of the Client Finance Team and into the Business Strategy Team. This move took place on the 8th of November 2022.
- 2.5 As part of Oldham Council's investigation, management interviewed the individuals listed below – further details can be found in [Section 5](#).

- Sophie Harland, Client Finance Team Manager
- Kelsey Barnes, Client Finance Officer
- Lynsey Marsh, Court of Protection Case Officer
- Keith Miah, Client Finance Officer
- Ben Simmons, Client Finance / Court of Protection Officer
- Rachel Skinner, Assistant Case Worker
- Michelle Thornhill, Court of Protection Case Officer
- Claire Andrew, Court of Protection Case Officer
- Gill Lill, Court of Protection Case Officer
- Wendy Whitehead, Assistant Case Worker
- Kim Simister, Court of Protection Team Leader
- Liz Taylor, Senior Accountant
- Kirsty Littlewood, Assistant Director Community Business Service (former manager and now left the authority)
- Angela Barnes, Carers and Brokerage Manager
- Lisa Entwistle, Head of Prevention & Client Services

2.6 Management interviewed Ian on the 10th of February 2023 and further details can be found in **Section 5**.

2.7 Having conducted a thorough investigation management concluded that:

- Ian does not see his behaviour as inappropriate. He feels that he is acting accordingly to fully support the council, to protect residents and for the good of the service. He understands that his personality is outspoken, and states that he does respect management, but he is opinionated at times.
- Ian does not agree with the management's assessment of his behaviour. He believes that the way he interacts with colleagues and management is okay and it is the interpretation and perception about him from colleagues that is inaccurate. He also feels that management do not understand him.
- Ian believes that he is the most knowledgeable and experienced officer in the Client Finance Team regarding the working processes, and therefore, admits that he finds himself jumping into conversations with colleagues to correct when he believes something is wrong, this he feels is due to their lack of experience.
- Ian ignores any management instructions regarding what duties are required from him and he pursues his own agenda most of the time.
- Ian is resistant to change; he feels that he is 'old school' and has always behaved this way, so, therefore, he does not believe that he needs to change.
- Ian feels he is approachable and does not believe that his comments or actions could be seen as disrespectful or offensive to his colleagues, as no colleagues have spoken to him about it. Colleagues feel that Ian is rude, dismissive and intimidating.
- Ian is frustrated with the restructure and his positioning within the Client Finance Team, and he does not agree with the decision that he was the only person to be moved, and Ian felt that he did not have a voice.
- Ian requested a Stress Risk Assessment upon his return to work, however, Ian was sent the stress risk assessment checklist, and this was not returned by him. Ian has stated

that the Stress Risk Assessment was not actioned by himself due to feeling it would not help or alter anything.

- Ian is avoiding taking responsibility for tasks that are his own obligation. Specifically, mandatory requirements such as registering for the DBS update service or not completing the Cyber Security training. By blaming the council or his manager for his failure to complete mandatory requirements, Ian is not taking ownership of his own work and is instead deflecting responsibility onto others. It is important for individuals to take ownership of their work and to be accountable for their actions in order to be successful in their roles. This behaviour falls below the standards of accountability that is expected from each employee at the council. This also means that Ian is operating outside of council policy.
- Ian denies that he was in a 4-week monitoring period and has stated this was not communicated, although there is written evidence of this.
- Witnesses have indicated that during team meetings Ian can be rude, obstructive and uncooperative with the team, and this behaviour undermines the trust and confidence that the team have for Ian.
- Ian denies anything that he does not want to believe, like his behaviour being inappropriate, Ian has been repeatedly spoken to and has had communications in writing about this and yet he is still not willing to acknowledge that his behaviour needs to change.
- Ian rejects claims that he has ever been spoken to about his behaviour being an issue. Ian states that he does not recall a conversation around his behaviour towards management or team members as being unacceptable, despite evidence that management have repeatedly spoken to Ian and have communicated concerns in writing or with investigations, over a number of years.
- Ian ignores anything he does not want to do, he either does not complete the task or instead of adhering to the policies and processes, Ian does things the way he thinks it should be done (as evidenced in this report).
- I believe it can be evidenced that Ian's behaviour falls below the expected standard of the Council and that this hugely affects his team and colleagues in the wider service.
- Witnesses have noted that team morale can be low at times and that this has been lifted since Ian has been moved out of the vicinity.
- It is evidenced that Ian ignores management instructions and in doing so, Ian is not using his time and resources effectively leading to reduced productivity, which in turn has a negative impact on the team's performance and overall success.
- Ian's history of continuous unacceptable behaviour does have a serious impact on the council's potential ability to carry out services, as colleagues have indicated they would leave the council due to Ian's daily behaviour if they have to work with him again in the future.
- Although it has been acknowledged that Ian can be helpful occasionally and that he is knowledgeable, Ian's unpredictable behaviour coupled with his failure to admit that at times his conduct can cause upset, along with his ignorance of management, gives concerns about any future working relationships in the Client Finance Team.
- Ian has a history of exhibiting unacceptable behaviour and for disregarding management instructions and procedures. Ian has been the subject of a previous disciplinary investigation and at least one prior letter of concern has been issued to him. The situation

of the last few months, which has led to a new letter of concern and this disciplinary investigation, shows similar contributing factors as past incidents. This historic and present behaviour is deemed unacceptable for a council employee and suggests that Ian is not meeting and not willing to achieve the expected standards of conduct and professionalism.

- Both Sophie Harland and Kelsey Barnes have experienced what they consider to be bullying and harassment by Ian in the workplace and this serious issue has brought significant negative effects on their mental health and job satisfaction. Evidence in this report, specifically Ian's disregard of management instruction and the continuous challenging of colleagues in an overpowering manner, corroborated by witness statements of the team, demonstrates that the allegations submitted in the grievances are substantiated.
- Ian's unacceptable behaviour cannot continue and needs to be effectively addressed, the report and evidence provided shows that Ian has created an improper work environment for his manager and colleagues, which has led to decreased morale.

2.8 Please note that both the HR advisor and I were aware that the report reached conclusions which were not part of the remit. As a result of this, the following was added to the hearing outcome letter:

"You also noted that the grievance had been substantiated without the hearing taking place as stated in the management report, and that this should be decided at the hearing, and not by the investigating officer. I acknowledged your concerns and noted this during the hearing, and I would like to take this opportunity to reassure you, as I did in the hearing, that I have taken a great deal of time to consider each allegation and the case as a whole in order to form my own opinion on this matter."

2.9 In his defence, Ian stated/said the following:

- That this is who he is and this is how he works.
- That the restructure had caused him to feel stressed
- Questioned why mediation recommended by occupational health hadn't been done
- That the performance improvement plan & further training identified as part of the disciplinary action in March 2020 hadn't been actioned
- Questioned the nature of the investigation and specifically why a more balanced view of his character, outside the structure, had not been sought.
- That if he knew how Kelsey felt, he could have addressed this.
- Stated that the grievance had been 'substantiated' without the hearing taking place as stated in the management report, and that this should be decided at the hearing, and not by the investigating officer

Further details can be found in Ian's statement of case **Section 6**.

3 Process

3.1 As the hearing officer, I first heard evidence from the Investigating Officer, who provided me with the background to the case, details relating to the investigation process and the conclusions drawn. As part of the management presentation, the following witnesses were also called to attend the hearing:

- Ben Simmons, Client Finance / Court of Protection Officer
- Kirsty Littlewood, Assistant Director Community Business Service (former manager and now left the authority)
- Sophie Harland, Client Finance Team Manager
- Kelsey Barnes, Client Finance Officer
- Lisa Entwistle, Head of Prevention & Client Services

Full details of the allegations and evidence provided by the Investigating Officer can be found in the management report - **Section 5** of this bundle. As part of the process, all parties present (management, Ian and I as the chair) could ask questions of all witnesses present and each other.

3.2 I then heard from Ian who presented evidence in his defence. No witnesses were called by Ian

3.3 Both parties then summed up their respective cases.

3.4 At the conclusion of the hearing, given the volume of information to consider, I stated that more time was needed to review the findings and reach a conclusion. As a result, it was agreed that we would reconvene on 19 May 2023.

3.5 Having considered the evidence that had been put before me and having sought advice from my HR Advisor, I concluded that some of the allegations had been proven and they did constitute gross misconduct. As a result, I had no alternative other than to dismiss Ian on the grounds of gross misconduct, a copy of the letter of dismissal letter can be found in **Section 2**.

3.6 Ian subsequently appealed against my decision, and a copy of his letter outlining the reasons for his appeal can be found in **Section 3**.

3.7 It is important to note that, as part of the appeal, Ian also raised concerns alleging breach of confidentiality around his dismissal. Ian stated that he had been made aware that news of the dismissal had been shared with his former colleagues. This allegation is currently being investigated, separately, by the service.

4 Statement of Case

4.1 It is my view that the decision I arrived at was reasonable and fair, and my detailed rationale is set out in the letter of dismissal, a copy of which can be found in **Section 2**.

- 4.2 Through the evidence presented to me, I am satisfied that the investigatory procedure complied with the Council's Disciplinary Procedure. In arriving at my decision, I took into account the evidence presented by both parties, key to reaching my decision was the following:
- 4.2.1 Ian prioritised work for the Brokerage Team over his own roles and responsibilities in the Client Finance Team. In mitigation, Ian stated that he didn't have access to the system he required to do client finance work. However, it was confirmed in the hearing that there was other work to do, which Ian confirmed, but it came across that Ian was choosing not to as he preferred brokerage work. Despite repeated management instructions not to do brokerage work, Ian continued.
 - 4.2.2 Prioritising work for the Brokerage Team meant that requests coming to Ian directly were completed before those in the 'inbox'. This meant that service for some residents was completed quicker as it came to Ian directly and others could be waiting a significant period of time. Ian's only explanation for this act was that he was 'being helpful' and took the 'one council' approach. When I explained that this meant some people were circumventing the system, Ian was unable to counter this point. Ian also accepted that doing this work meant he was not completing Client Finance related work (his duties). This was contrary to management requests that Ian focus on his own role/work.
 - 4.2.3 Linked to the above concerns, in not undertaking work Ian was asked to do, this resulted in financial loss to the council. Ian did state that he initially highlighted the problem. However, following this, in questions with Kirsty Littlewood when Ian was asked to support the solution to this, it resulted in further financial loss when Ian failed to complete the work assigned to him.
 - 4.2.4 Ian completely refused to follow the reasonable management instruction to complete his calendar with the work he was doing. In questioning, Ian explained he didn't see why this should be done, and it was micromanagement. This is a reasonable management instruction which was being complied with by the rest of the team.
 - 4.2.5 Ian had closed off notes on Mosaic with no follow up which led to queries coming to the team that couldn't be answered. There was a particular closure of a record that Ian did which he explained was due to a deceased client. Ian explained he hadn't made contact as he was allowing the 'dust to settle'. Ian closed this off without any notes and when this was discussed during the hearing, Sophie Harland confirmed the client had contacted the Council following the death, so they had initiated the contact. This was only one example of several and Ian was reminded in supervisions to update Mosaic appropriately which he failed to do. Management were concerned that this presented a reputational risk to the council.
 - 4.2.6 Not registering for the DBS update service and undertaking mandatory training despite repeated reminders evidenced in several of Ian's supervision records. Ian cited problems with the links to the websites. However, despite managers requesting Ian to follow this up with the relevant teams, he failed to do this.
 - 4.2.7 Ian failed to generate invoices for client payments with low amounts as he did not feel the amount requested justified officer time and resources being spent on

creating the invoice. Ian was unable to provide a reasonable explanation for this during the meeting, other than to state that this would be identified and written off at the 'debtor management stage'. However, this lack of action meant that there would be no debtor check identification and could have a reputational impact on the Council if future requests for payments increased for the residents. This also meant that the council didn't recover monies that it was owed.

- 4.2.8. In relation to the grievances and allegations of bullying, I determined that there was some evidence to suggest that Ian's treatment of Kelsey could be perceived as bullying. Examples were provided of belittling her in front of colleagues and giving her incorrect information when help was requested. Ian stated that if he knew how she'd felt, he could have addressed this. However, I believe there is sufficient evidence within the pack to show that management tried to address Ian's conduct towards others with him on numerous occasions. This was in both management conversations with Lisa Entwistle and supervisions with Sophie Harland which were either followed up by email or documented in supervision notes (factual evidence).
- 4.2.9 Ian could offer no explanation or mitigation for his actions apart from to explain that this is who he is and this is how he works. This gave me serious concerns about Ian's values and behaviours and the evidence in the pack demonstrates a recurring theme of similar concerns raised with him dating back to 2019. I had no confidence from his responses during the hearing that there would be any improvement in his conduct. The pack provided evidence of several chances of informal warnings and management conversations for Ian to improve his conduct and at the time of the hearing, there had not been sustained for any significant period of time. There was one period of improvement cited within the evidence of 4 weeks, and as soon as that monitoring period ended, within 2 days, there was a further conversation about conduct, which ultimately led to this investigation.
- 4.2.10 In Ian's submission, he explained that the restructure had caused him to feel stressed. Management had done a referral to occupational health, and this advised a stress risk assessment, which Ian had also requested directly. Ian claimed that this hadn't been done, however, Ian had chosen not to engage with this process, initially stating that he felt nothing would improve. Ian also questioned why a different manager hadn't done this with him but Ian hadn't requested this. Further to this, in the hearing, Ian stated he knew how to manage his own stress following training and work he had done as part of his military service.
- 4.2.11 Ian also queried why mediation recommended by occupational health hadn't been done and it was established that this wasn't in the report from occupational health. Ian stated he recalled this being discussed but hadn't followed this up when it was absent from the report with occupational health, or with management.
- 4.2.12 Ian did point to the fact that following the previous disciplinary action in March 2020, the outcome letter recommended a performance improvement plan and further training. I note that Ian stated these weren't done and there was no evidence provided in the pack to confirm otherwise. However, it is clearly documented and evidenced, that over time, with various managers, IB was spoken to about the inappropriateness of his conduct with colleagues and his repeated failure to follow reasonable management instructions.

5.0 Response to Appeal Letter dated 24 May 2023

5.1 As part of this summary document, I have also considered, below, the rationale outlined in the appeal letter. I have addressed each of the salient points below, with links to relevant parts of this document. Appeal comments are in blue, with my responses in black.

- It was not a proportionate response to the allegations

I found the first two allegations were wholly proven and serious enough to warrant gross misconduct. In accordance with the policy, I did consider action short of dismissal and potential redeployment. However, due to the pattern of this repeat behaviour over a period of years with different managers and no improvement, with no assurance from Ian that this would change, the only option remaining was dismissal.

- The finding I was guilty of committing alleged acts with no factual proof other than witness statements

See 4.2.1 to 4.2.4. In addition, as included in the Management Investigation report, there were clear and documented examples in which evidence was provided.

- I expressed my concern around a conflict of interest in my statement of case regarding the close personal relationships of the managers (my managers) and witnesses who raised the allegations. I informed you I raised an SAR with the organization in order to confirm/refute collusion (email included in the pack dated February 2022) and had still not received any response. (3 months later)

The outcome of the hearing was based on the evidence presented. Although the 'relationship' between managers and staff was not considered as part of this hearing, which relied solely on factual evidence that was presented, there was historic information which showed a similar pattern of behavior with different management.

Furthermore, I understand that the SAR is being processed. This request had no bearing on the consideration of the evidence and in determining the outcome.

- The investigator did not seek a balanced view for the report in interviewing the manager I was temporarily working for even though the timescale would have allowed this. I started working in Business Strategy in November 2022 and I was not interviewed until February 2023. I have worked with this manager before and have had no issues identified by her. You stated you did not feel this was necessary.

The evidence considered was in relation to the allegations being investigated. All the witness testimonies also related to matters highlighted in the Client Finance Team. Conversations with the current manager would not provide any additional evidence with respect to allegations being considered as part of this investigation.

- Management called a witness who is currently suspended from duties in the Council.

The status of the witness wasn't relevant to the hearing process. Ian was able to challenge this witness' testimony and raise any questions.

- You stated that you had no assurance my behaviour would change. I had been working in Business Strategy since November 2022 until dismissal, and included an email in the pack from Vin Johnson, Senior Intelligence & Data Analyst, offering his appreciation and thanks to me and another colleague stating "we had been absolutely brilliant in helping out" and he had been impressed by our "attitude and reliability".

My conclusion was based on the evidence presented. Although I noted this email, evidence, historic and current, clearly shows that Ian was unable to sustain improvements in behavior and performance.

- The displacement out of the Brokerage team in the organisational change caused me undue stress, and the selection process for the decision that I should be the one moved, when there were a number of us in the team, has still not been provided, despite me asking the management witness again for this at the hearing. You did not pursue this.

Although concerns were noted, this has no bearing on the issues at hand. Furthermore, the issue of stress was noted and offers of support were made – please see 4.2.10 above.

- The disciplinary action in March 2020, which was not a live warning, recommended a Personal Improvement Plan and further training. I stated this was not implemented and do not accept your finding that I had other management conversations that should have sufficed.

There is clear and documented evidence in the investigation report which identifies a number of conversations with various managers. Furthermore, Ian was spoken to about the inappropriateness of his conduct with colleagues and his repeated failure to follow reasonable management instructions – please see 4.2.12, above.

- The Occupational Health report stated a stress risk assessment with my line manager. You stated I could have asked for another manager. Why did my line manager not specify I could do this.

A stress risk assessment form was provided to Ian to complete. Ian didn't complete the form or raise the option of discussing the stress risk assessment with an alternative manager, initially stating that he felt nothing would improve. Further to this, in the hearing, Ian stated he knew how to manage his own stress following training and work he had done as part of his military service.

- I had registered for DBS update and had a valid DBS dated from July 2022 which was in the pack, and provided email evidence I had recently been asked by HR to update however had responded saying I was having trouble accessing the link. I gave an

explanation about mandatory training and informed the panel that subsequently my problems accessing the system had been rectified by help from the manager in the Business Strategy Team and stated I had escalated to my manager in Client Finance at the time for assistance.

See 4.2.6, above. It is also important to note that the actions outlined by Ian, above, were completed as the investigation was taking place rather than at the time of request by the manager.

6 Conclusion

- 6.1 I considered the case independently and solely on its merits.
- 6.2 Given the severity of the misconduct, I believe that my decision to dismiss Ian Barkley, as outlined in my letter dated 19 May 2023, fell within the band of a reasonable response, and that in applying this sanction; I acted as a reasonable employer, in the circumstances