

# STANDARDS COMMITTEE

9 OCTOBER 2019

## REPORT OF THE MONITORING OFFICER

### CODE OF CONDUCT COMPLAINTS

- (1) ABC/17/06 & 17/09
- (2) ABC/18/09
- (3) ABC/18/05

#### Introduction

1. This report is for information purposes and I ask members only to note my report. The report informs members of decisions I have taken under the Council's approved Arrangements for Dealing with Code of Conduct Complaints and explains the context and reasons for those decisions.

The approved Arrangements require me to report to the Standards Committee.

#### Complaint No.1 (ABC/17/06 & ABC/17/09)

2. This series of very closely connected complaints was made against Cllr Jane Martin by a number of complainants but was treated as a single complaint for investigation purposes. It was referred for external investigation by an experienced retired local government Monitoring Officer/solicitor in October 2017. Due to the complexities of the investigation and the difficulties of arranging some of the interviews, the Investigator's final report was not provided until September 2018.
3. The Investigating Officer's Final Report is appended to my Decision Notice dated 1 October 2019 which is attached. The Report has been redacted to remove some personal and other data which it is unnecessary or inappropriate to publish, including the identities of the complainants.
4. The Investigating Officer concluded that there was no breach of the code of conduct in relation to allegations of bullying but that, on the balance of probabilities, a posting on Facebook in August 2017 had brought Councillor Martin's office into disrepute and thereby breached the code of conduct.
5. I should make it clear that the Investigating Officer's conclusion, although it followed a formal and independent investigation process, is not a formal finding of a breach of the code of conduct. Only a Standards Committee Hearing Panel can make such a formal decision. Miss Martin disagreed with the Investigating Officer's conclusion and her written comments on his draft report are appended to the Decision Notice in full-with suitable redactions – in order to ensure a full and fair picture is given to members.

6. In accordance with the Arrangements, I explored the possibility of informal resolution with the subject member. This process became protracted and no satisfactory resolution was reached. Miss Martin was not re- elected in May 2019. For this reason – and for the other reasons explained in my Decision Notice – I have decided that there is little or no public benefit in holding a formal Hearing into the matter and that, beyond issuing confidential written advice to Miss Martin regarding the Investigating Officer's conclusion, no further action should be taken in relation to the complaint.

#### Complaints 2&3 (ABC/18/09 & ABC/18/05)

7. The two complaints referred to above are dealt with in a separate Exempt report on this agenda.

#### Changes to the Arrangements

8. In the course of processing the complaints I have noted that one provision in the Arrangements (namely that in para 4.7 of Annex 1 which provides for publication on the Council's website of my decision on whether to refer a complaint for investigation or seek to informally resolve it etc) is out of step with recent adjudication decisions and current practice in relation to data protection. I therefore propose that this requirement to publish is not followed in the current and future cases and is removed from para. 4.7 of Annex 1.
9. I also wish to carry out a wider review of the Arrangements in order to ensure they remain fit for purpose and reflect learning from handling complaint cases in the years since their adoption in 2012. I propose to present a further report to this Committee with any recommendations arising from that wider review.

IT IS RECOMMENDED that the Standards Committee

- (i) note my report on the complaints.
- (ii) recommend to Full Council that I be retrospectively authorised to amend the Arrangements as set out in para 8 of this report.
- (iii) receive a further report from the Monitoring Officer in relation to a wider review of the Arrangements.

Terry Mortimer  
Corporate Director of Law and Governance  
and Monitoring Officer  
1<sup>st</sup> October 2019

**STANDARDS COMMITTEE**

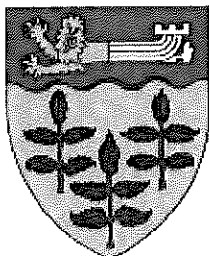
**9 OCTOBER 2019**

**REPORT OF THE MONITORING OFFICER**

**CODE OF CONDUCT COMPLAINTS  
ABC/17/06 AND ABC/17/09**

**Against: Councillor Jane M A Martin**

DECISION NOTICE OF THE MONITORING OFFICER (DN1)



# ASHFORD BOROUGH COUNCIL

## Decision Notice of The Monitoring Officer

Complaint Nos: ABC/17/06 and ABC/17/09

Against: Councillor Jane M A Martin

### The Complaint

1. In September/October 2017, I considered and referred for a single investigation three very closely-related complaints concerning the alleged conduct of **Councillor Jane M A Martin** (“**Miss Martin**”). Miss Martin was at that time a Member of Ashford Borough Council (“the Council”).

### Complaint Summary

2. A general summary of the Complaint is set out in the Final Report of the investigating officer, W D Milne TD, LL.B, LARTPI, Solicitor (“the Investigating Officer”) dated September 2018. A copy of the Investigating Officer’s Final Report (with its appendices removed, and other personal data or potentially defamatory material redacted or anonymised as appropriate) is attached at Annex 1.

### The Investigating Officer’s Conclusions

3. In order to ensure that relevant parties are treated fairly in an investigation and its outcomes, it is common to afford to parties whose conduct may be criticised an opportunity to comment on any draft findings before they are settled. To this end, before finalising his Report, the Investigating Officer sent copies of his draft report to Miss Martin, and also to all the complainants, for their comments.
4. Attached at Annex 2 is a copy (similarly redacted or anonymised as appropriate) of the detailed comments on the Investigating Officer’s draft report which were submitted to the Investigating Officer by Miss Martin. Her comments are then followed by the Investigating Officer’s responses to those comments.
5. The Investigating Officer’s Final Report concluded that, in his view, there had been:-
  - **no breach** of paragraph 3(2)(a) of the Council’s Code of Conduct (bullying any person);

- a **breach** of paragraph 3(2)(f) of the Council's Code of Conduct (bringing one's office or the authority into disrepute).

### **Consideration of the Investigating Officer's Final Report**

6. On receipt of the Investigating Officer's Final Report, and in consultation with the Independent Person in accordance with the Council's Arrangements for Dealing with Code of Conduct Complaints under the Localism Act 2011 ("the Arrangements"), I took the view that:-

- the absence of any finding of breach of paragraph 3(2)(a) of the Code of Conduct; and
- the nature of the breach of paragraph 3(2)(f) of the Code of Conduct found by the Investigating Officer in relation to the remaining allegation against Miss Martin

meant that I could seek to resolve the complaint informally. Accordingly I entered into discussions with Miss Martin with a view to informal resolution.

### **Subsequent Events**

7. During the course of my discussions with Miss Martin with a view to informal resolution of the complaint, in May 2019 Miss Martin ceased to be a Member of the Council. She therefore ceased, from that time, to be subject to the Code of Conduct and to any sanctions which might be imposed thereunder.
8. Nevertheless, I continued my discussions with Miss Martin with a view to informal resolution of the complaint for a period after she ceased to be a Member of the Council. However, no outcome which I regarded as a satisfactory one in terms of informal resolution was reached.
9. In the meantime, however, Miss Martin had circulated a letter dated 11 March 2019 addressed, "Dear [village] Resident". In that letter (inter alia) Miss Martin stated that she had "at no time sought to offend anyone", and that she "would at no time knowingly, or intentionally use language or behaviour" that could cause her to breach relevant standards of conduct. Miss Martin's letter also expressed her desire to work together with the relevant Parish Council "for the benefit of all".

### **Decision**

10. In the light of all of the above, and having consulted and taken into account the views of the Independent Person, **I have decided:-**

- that there would be little or no public benefit in holding a formal hearing into the complaint by a Hearing Panel of the Standards Committee;
- to issue confidential written advice to Miss Martin regarding the Investigating Officer's conclusions;

DN1

- beyond that, to take no further action in relation to the complaint.

### Notification of Decision

11. This Decision Notice is sent to:-

- The complainants
- Miss Martin, the Member against whom the complaint was made.

### What happens now

12. The Arrangements require me to report to the Council's Standards Committee following an attempted informal resolution process in relation to a complaint.

13. Moreover, the legal principle is that there is a strong public interest in the disclosure of the final findings made by an independent investigator who has followed a formal procedure to investigate a complaint about the conduct of an elected councillor when performing public duties. This public interest applies once any formal processes in relation to the investigator's final findings have been completed or terminated, because such transparency is essential to the maintenance of proper standards in public life, whether or not the councillor the subject of the complaint remains in public office at that time.

14. Therefore, I will report this Decision and its Appendices for information to the next meeting of the Standards Committee, which is scheduled to be held on 9 October 2019.

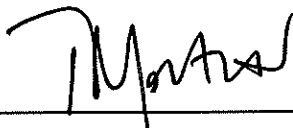
### Appeal

15. There is no right of appeal against this Decision.

### Additional Help

16. If you need help or support in relation to this Decision Notice or future contact with the Council, please let me know. If you have difficulty reading this Decision Notice, we can assist you, in accordance with our duties under the Equality Act. We can also help if English is not your first language. Please contact our Customer Services: email: [customer.care@ashford.gov.uk](mailto:customer.care@ashford.gov.uk), telephone (01233) 331111, or call in to either the Civic Centre, Ashford or the Town Hall, Tenterden.

Signed:



Date: 1st October 2019

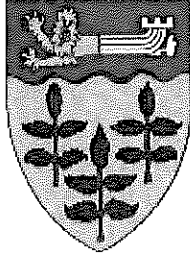
**T.W. Mortimer, LL.B., Solicitor**  
**Director of Law & Governance and Monitoring Officer**  
Ashford Borough Council  
Civic Centre  
Tannery Lane  
Ashford  
Kent. TN23 1PL

DN1

**ANNEXES**

Annex 1: Partly redacted copy of the Investigating Officer's Final Report (without appendices).

Annex 2: Partly redacted copies of comments on the Investigating Officer's draft report submitted by Miss Martin; immediately followed by the Investigating Officer's responses to those comments.



# ASHFORD BOROUGH COUNCIL

## **Decision Notice of The Monitoring Officer**

**Complaint Nos: ABC/17/06 and ABC/17/09**

**Against: Councillor Jane M A Martin**

Annex 1: Partly redacted copy of the Investigating Officer's Final Report (without appendices).



**FINAL REPORT**

**LOCAL INVESTIGATION**

**CONCERNING BOROUGH COUNCILLOR JANE MARTIN, A  
MEMBER OF**

**ASHFORD BOROUGH COUNCIL.**

**Complaint by:-**

- a) Parish Councillor A
- b) Parish Councillor B
- c) Parish Councillor C
- d) D Parish Council – ( Councillors)

W D Milne TD, LL.B, LARTPI  
Solicitor

Investigating Officer  
September 2018.

## CONTENTS

1. INTRODUCTION.....	3
2. METHODOLOGY.....	3
3. SUMMARY OF ALLEGATIONS AND RELEVANT PARTS OF THE CODE OF CONDUCT.....	3
4. THE LEGAL POSITION .....	4
5. EVIDENCE.....	5
6. CONCLUSION.....	9

## APPENDICES

- a) Original Complaint Form Details from
  - 1) Councillor A & B
  - 2) Councillor C
  - 3) D Parish Council
  
- b) Notes of Interview of Parish Councillor A
  
- c) Notes of Interview of Parish Councillor B
  
- d) Notes of Interview of Parish Councillor C
  
- e) Withdrawn.
  
- f) Note of phone interview with Parish Councillor E
  
- g) Note of phone interview with Parish Councillor F
  
- h) Notes of Interview of Borough Councillor Jane Martin together with further responses and Original Post Interview Responses.
  
- i) Second Facebook Posting of 12<sup>th</sup> September 2017.

## **1. INTRODUCTION**

1.1 This matter was referred to me by the Monitoring Officer for Ashford Borough Council who appointed me as Investigating Officer. I am the former head of Legal Services for Swale Borough Council and before my retirement from full-time work had been in Local Government service for 35 years. I accordingly have considerable experience of Monitoring Officer / Standards Issues and in the last eight years or so have been appointed as Investigating Officer in more than 45 similar Standards Investigations.

1.2 At the start of the investigation the Monitoring Officer supplied me with copies of two files relating to the case which contained the complaints against the Subject Member together with various background papers.

## **2. METHODOLOGY**

2.1 In addition to considering the information specified above interviews were carried out with the Parish Councillors                      and            B                      together with Parish Councillor   C                      on   own behalf and that of   D                      Parish Council and the Subject Member. After each interview a note of interview was prepared by myself as Investigating Officer and sent to the interviewees for consideration and comment. Telephone interviews were also carried out with Councillors   E                      and   F                      and confirmed by email. The final versions of those notes of interview are attached to this report and were used together with all the written material to assist in completing the Final Report and reaching a conclusion. The appended material should be read in conjunction with the report.

## **3. SUMMARY OF ALLEGATIONS AND RELEVANT PARTS OF THE CODE OF CONDUCT.**

3.1 The complaints were brought by the various complainants specified above and relate primarily to the conduct of the Subject Member in email correspondence and at council meetings and in particular to two Facebook entries, one of which a copy exists and a further entry which was deleted without a copy being retained. The complaints are analysed in the evidence section of this report.

3.2 The Code of Conduct adopted by Ashford Borough Council is the Kent Code of Conduct for Members which is the same as that adopted by the parish councils involved in this case. The general obligations for members contained within paragraph 3(2) of the Kent Code and the two sub paragraphs which appear relevant for consideration in this case are as follows;

3(2)(a) You must not bully any person and

3(2)(f) You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute.

It should be noted that the Seven Principles of Public Life although useful for interpretation purposes do not form part of the Kent Code.

#### 4. THE LEGAL POSITION

4.1 The current Standards regime was created under the provision of the Localism Act 2011 as contained within the provisions of the Kent Code of Conduct for Members adopted by Ashford Borough Council. The previous Standards regime had the benefit of guidance drafted by the previous Standards Board for England in May 2007, some of which may assist in reaching a decision in the current case, as the Kent Code draws on the old model code.

4.2 On reading decided cases and previous decisions of the Standards Board / Standards for England it is clear, however, that a distinction must be made between the general rough and tumble of politics, which must be expected in the political arena as opposed to more extreme modes of behaviour.

4.3 In cases such as this where there is alleged egregious conduct it is important to undertake a balancing exercise to decide whether what was said or done falls within one of the exceptions to freedom of expression under common law, statute or the convention. If the conduct is less egregious, it is likely to be more difficult to prove a breach of the Code. This is because the interests - freedom of expression and, in the present context, proper standards of conduct by members of local authorities- are not easily commensurable. One of the leading cases on this is **The Queen on the application of Lewis Malcolm Calver and The Adjudication Panel for Wales and Public Services Ombudsman for Wales (2012 High Court)** which helpfully summarised other cases on the matter.

4.4 The key convention right is Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms which is given direct effect in domestic law by the Human Rights Act 1998. Article 10 reads as follows:

- (1) Everyone has the right to freedom of expression. The right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers....
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of... the protection of the reputation or rights of others,....

4.5 It is noted in the above case that “if speakers could be punished each time they include a colourful, non-rational epithet in their publication or address, much valuable speech would be inhibited”. This means that “some margin should be allowed for invective and exaggeration, even if that means some apparently worthless comments are as fully protected as a carefully balanced argument”. In short “freedom only to speak inoffensively is not worth having”.

4.6 It must also be noted that greater protection is extended to politicians acting in a political capacity. This is because of the recognition of the importance of expression in the political sphere and that the limits of acceptable criticism are wider in the case of politicians acting in their public capacity than they are in the case of private individuals. This recognition involves both a higher level of protection (“enhanced protection”) for statements in the political sphere and the expectation that if the subjects of such statements are politicians acting in their public capacity, they lay themselves open to close scrutiny of their words and

deeds and are expected to possess a thicker skin and greater tolerance than ordinary members of the public.

4.7 With regard to paragraph 3.2(a) which relates to bullying Standards for England provided a definition in their published information. They characterise bullying as:

“Offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim’s confidence, capability and health. Bullying conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of their colleagues, through the press or in blogs. It may happen once or be part of a pattern of behaviour, although minor isolated incidents are unlikely to be considered bullying. It is also unlikely that a member will be found guilty of bullying when both parties have contributed to a breakdown in relations”.

4.8 The guidance goes on to provide helpful advice that “anyone alleging bullying should provide examples of the words or actions used to provide clear objective evidence of bullying. They should try to describe the specific behaviour they are concerned about, providing dates, times and locations. This is because it is more difficult to judge bullying from general remarks”.

4.9 Paragraph 3.2(f) deals with the disrepute issue and the former guidance made the salient point with regard to questions of disrepute making it clear that “as a member, your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public”. It went on to state that “you should be aware that your actions ...might have an adverse impact on your office or authority”.

4.10 In general terms disrepute can be defined as lack of good reputation or respectability. In the context of the Code of Conduct, a member’s behaviour in office will bring that member’s office into disrepute if the conduct could reasonably be regarded as reducing the public’s confidence in that member being able to fulfil their role. The question in all such cases is whether the behaviour could reasonably be regarded as bringing the office or authority into disrepute.

4.11 Outside of the above guidance it is clear that each case must be decided on its merits after considering all of the circumstances and evidence.

## **5. EVIDENCE.**

5.1 It is clear to me having analysed all the notes of interview and appended material that the relationship between the Subject Member and some of the parish councillors of G Parish Council and D Parish Council has been somewhat fraught and difficult for some time. Matters seem to have been brought to a head by issues connected to the and additional funding for the same. Councillor B in notes of interview made it clear that the Subject Member had always been very keen on promoting the said and obtained funding for the same and revision of the document. The document which was originally entitled the was

prepared at a cost of [redacted] plus vat and was financed by way of a £1,000 KCC members grant, £800 Ashford Borough Council ward members grant, [redacted] D Parish Council and £3398.75 from [redacted] G reserves. That document was then submitted to Ashford Borough Council as Local Planning Authority.

5.2 Since then the Subject Member has sought to engage the consultants [redacted] to update the policy with financial assistance from the parish council covered by the [redacted]. The Subject Member appeared to be of the view that the policy needed to be strengthened in order to assist in the local planning process and sought to obtain a grant of £500 from each parish council covered by the policy. After much email traffic and debate [redacted] G Parish Council at the parish council meeting on [redacted] 2017 decided 4/3 against providing extra funding. [redacted] D Parish Council for its part also voted against further funding.

5.3 These decisions and the run up to them appear to have acted as the catalyst which led to the publication of the two Facebook entries specified in the summary of allegations section of this report. The first posting was allegedly made on Saturday 19<sup>th</sup> August 2017 and appeared on the [redacted] G Community page but was deleted within 2/3 hours of being published. Evidence of the contents of that posting is, however, referred to in some detail in the notes of evidence and associated material. Councillor [redacted] C runs through the sequence of postings in the first two pages of [redacted] complaint details and makes the point that [redacted] C joined the debate and pointed out in a post that [redacted] D Parish Council had also decided not to support the initiative. The second entry was posted on the [redacted] Facebook site on 12<sup>th</sup> September 2017 (see attachment). It is understood that the Facebook site [redacted] is a personal Facebook site of the Subject Member while [redacted] Community page is more widely published and is not within the control of the Subject Member.

5.4 With regard to the general allegations contained within the complaint forms it appears to my mind that all of the same relate to email correspondence between members or what has been said at parish council meetings and as such fall clearly within the enhanced protection afforded by Article 10 and the associated case laws. This means that all that was said and written involved a higher level of protection being statements within the political sphere. They were the statements of politicians acting in their own public capacity who lay themselves open to close scrutiny of their words and deeds and are expected to possess a thicker skin and greater tolerance than ordinary members of the public.

5.6 The effect of Article 10 of the ECHR has been addressed recently in the case of R (on the application of Harvey) v Ledbury Town Council 2018. In that case, it was noted that Article 10 does not confer an unqualified right on members to bully and/or harass or otherwise mistreat individuals in the exercise of their right to freedom of expression. Article 10 on its face explains that it carries duties and responsibilities, and may be subject to restriction for, inter alia, the protection of health or morals, or for the protection of the reputation or rights of others. Hence the protection of Article 10 is not limitless.

5.7 A copy of the first Facebook posting of Saturday 19<sup>th</sup> August 2017 has not been produced but as stated previously is evidenced in detail by several witnesses. It is referred to in the complaint details submitted by Councillors [redacted] A and [redacted] B but in view of the fact that neither of them actually saw the post little weight will be given to their evidence in this respect. The post, however, was read by parish Councillors [redacted] C

E and F and is referred to in the notes of interview of the Subject Member. Councillor E in particular has a clear memory of the posting and was so incensed by the same that E wrote an email the very next day to Councillor with copies to Councillor C and others. E saw the postings while returning from holiday and thus did not discuss the matter with fellow councillors prior to emailing the Subject Member. That email and an email of my note of interview can be found at appendix f and summarises the nub of what appears to have been said and the complaint.

5.8 In paragraph 3 E states that "the comment I am referring to is the one where you wrote about D Parish Council not listening to the views of their parishioners and that C of D Parish Council, as a landowner, could be working to serve C's own best interests rather than those of the Parish when considering the future development of the village". E goes on to say that "I imagine that a number of people will have read this given that it is a public forum and that the Community Group is an active one." Finally E makes the point that in E's view it was potentially slanderous to put such views in writing on a public forum however briefly it might have been. E states that she is not a regular user of Facebook and that even E saw it i.e. the post. No response to that email was ever received from the Subject Member despite Councillor E reminder email of 31<sup>st</sup> August 2017 which included the original email.

5.9 Councillor C and the recipient of the comment also has a clear recollection of what was said, explaining at paragraph 4 of the notes of interview that the post states specifically and clearly that owned land in the village and therefore may not be working in the best interests of the residents but in C's own best interests. C also felt that the phrase "to make a quick buck" was also specifically mentioned and as he had been classified as a landowner in the posts, also appeared to apply to C. C took exception to the posts which in C's view were of a possible defamatory nature as the only property which C owned within the parish was a house with a garden. C makes the point clearly that C does not own any land which would benefit from housing development and in C's view no right minded member of the public would think otherwise. In particular, C took exception to the suggestion that C was somehow not working in the best interests of the residents of the village, but in C's own best interests. On reviewing the evidence it is apparent that Councillor F in notes of interview, mentions that Councillor C

Councillor C has since clarified this possible inconsistency by making it clear that C's garden is approximately metres in length, which is the same length as other local houses, It is fenced off from the specifically garden area

5.10 The recollection of the posting of 19<sup>th</sup> August 2017 is also supported by Councillor F as can be seen from the note of email interview contained in my email to F of 18<sup>th</sup> April 2018 (appendix g). F states that on Saturday 19<sup>th</sup> August 2017 F recalls seeing the series of posts started by Councillor H to which Councillor Jane Martin contributed and being appalled by what she wrote. In F's recollection she basically said that as a landowner in the village (Councillor C) may not have the best interests of the parishioners at heart because owned land which could easily be built on and therefore C's motives might not have been in the best interests of his parishioners. Councillor F was so annoyed by the situation that F immediately sent a text message to Councillor C, a copy of which is attached to F's

notes of interview and has been seen by me. The text message reads I hope you screen shot her comments cos it's been taken down from the site". C replies "no I didn't screen shot it! F..k! Did you see it?" To this Councillor F replied – "Oh yes I saw it and I've just got home and was gonna screen shot it and the whole post has disappeared! I bet someone said that she'd overstepped the mark! She is totally out of order!"

5.11 By way of counter argument the Subject Member in her notes of interview accepts that she posted something around 19<sup>th</sup>/20<sup>th</sup> August 2017 but does not recall the content. She seems to recall that a series of posts may have been started by Councillor H but has no longer any memory of the content. She also made the point that with regard to the allegations made by Councillor C that the term "a quick buck" is not the type of language that she would have ordinarily used. She also confirmed that she was not in possession of a copy of the Facebook posting, nor was she able to obtain one.

5.12 To my mind it is clear that a series of Facebook postings was made on Saturday 19<sup>th</sup> August 2017 and was started by Councillor H and was contributed to by the Subject Member. Having assessed the evidence I consider that on the balance of probabilities it is more likely than not that what was posted was in line with what the three witnesses quoted above have said and especially in line with Councillor E recollection, which, being written on 20<sup>th</sup> August 2017, was in reality a contemporaneous note. The validity of Councillors C and F evidence is in my view strengthened by a contemporaneous text message, also quoted above, which shows the immediacy of the situation and the strength of feeling at what was said. Even though the Subject Member has suggested there was likely collusion between witnesses regarding the "missing" Facebook posting of 19<sup>th</sup> August 2017, I consider this to be highly unlikely on the facts. Councillor E email to the Subject Member on 20<sup>th</sup> August 2017 expressly states it was responding to the post without having spoken to colleagues E had only just returned from holiday and Councillor C has said this email was sent without C's prior knowledge. It also seems clear from the accounts of Councillors C and F and the text between them on 19<sup>th</sup> August 2017 that the Facebook post had been seen by them separately rather than suggested one to the other.

5.13 In view of this it is my view that the particular posting by the Subject Member does not have the protection of Article 10 of the ECHR and associated case law. It falls within the exception relating to the protection of the reputation or rights of others i.e. the allegations against Councillor C quoted above were a step too far. Hence in my view there has been a breach of paragraph 3(2)(f) of the Code of Conduct for Members in that the comment posted, albeit for a short period of time was circulated widely, which circulation included non-members and as such brought the office of the Subject Member into disrepute. What was said was of a potentially disreputable nature and was not valuable comment or mere exaggeration or invective, but alleged bad faith / improper purpose and was potentially defamatory. This to my mind is a step too far and falls within the exception to the Article 10 protection as it relates to reputation.

5.14 The second Facebook posting of 12<sup>th</sup> September 2017 can be seen at appendix i above. Although fairly robust in some respects and no doubt of an unpleasant nature to those found wanting by the Subject Member, did not to my mind cross the boundary into disrepute. Similarly, having analysed the description of bullying contained in the legal section of this report it is my view that none of the actions described fulfil that criteria. In particular, it

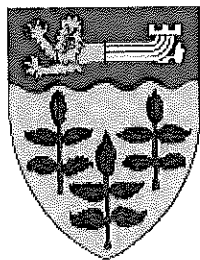


should be noted that it is unlikely that a member would be found guilty of bullying when both parties have contributed to a breakdown of relations. More importantly no specific examples of bullying have been cited together with examples of the words or actions used.

## **6. CONCLUSION**

6.1 For the reasons specified in the evidence section it is my view that there has been no breach of paragraph 3(2)(a) of the Code of Conduct, but that there has been a breach of paragraph 3(2)(f).

W D Milne  
Investigating Officer.  
September 2018.



# ASHFORD BOROUGH COUNCIL

## **Decision Notice of The Monitoring Officer**

**Complaint Nos: ABC/17/06 and ABC/17/09**

**Against: Councillor Jane M A Martin**

Annex 2: Partly redacted copies of comments on the Investigating Officer's draft report submitted by Miss Martin; immediately followed by the Investigating Officer's responses to those comments.

Final Draft of the Local Investigation into Cllr Jane Martin

Summary

The report relies on what is described as probability and not tangible evidence and as such is flimsy and fails to make any justifiable argument as to why these complaints should be upheld. This investigation has been unfairly handled and failed to deliver clear evidence of wrong doing. It should be dropped based on lack of evidence.

I have based my defence at all times on the truth and on fact.

The findings of this report consider that based on the recounting of events by two (unreliable) people, and the addition of some documents by a third, that it is probable that a breach has occurred.

Based on probability, I would strongly argue that the evidence I have provided from 4 separate people far outweighs that of the two that have submitted their accounts. The amount and detail of evidence contained in my submission is more factual and backed up by real tangible evidence, unlike that of the complainants. If probability is to be used, then there is no case to answer.

1. The Probability that only 3 likeminded individuals, and all with a personal dislike of Cllr Martin, would see and note in detail potentially slanderous material is highly improbable in a Facebook group of more than 1700 members, - some of whom are very reputable. If such behaviour really had taken place, it is highly probable that others would also have complained, given that it was strongly argued by E that many people would have seen the posts.
2. The Probability that other members of that group have come forward to support my activity as proper and professional and in no way slanderous or defamatory, must clearly outweigh the convenient relation of events from the complainants.
3. The probability that residents consider that this Council member is unable to fulfil their role as the Borough Councillor is disproven by the inability to present other witnesses to the alleged defamatory post from more than 1700 members and also from clear evidence as to my effectiveness as a Councillor.
4. The improbability that 3 "appalled" individuals ( the complainants) would ALL fail to either copy, print, forward, screenshot, scan, or simply call someone to do one of the above, IF there was any likelihood that I had acted inappropriately, must be accepted and the Probability that this did not happen because there was no incriminating posts to be captured must also now be clear.
5. The Probability that a considerable amount of untruths have built these complaints lies in the use of conjecture in the case of A and B assentation's into Facebook posts that they admit they never saw, must be accepted.
6. The Probability that there is a strong personal and professional dislike of Cllr Jane Martin amongst the complainants must be accepted based on the degree of unsubstantiated and anecdotal "evidence" they have presented and their failure to accept requested meetings to resolve issues by myself. In addition, the factual, tangible evidence that I have presented

and the witnesses I have presented, demonstrate that I have, despite the vitriol, sought to continue my work for the good of my constituents.

Conclusion

Whether we chose to assess this report and its findings based on true fact or on the Investigating Officer preferred and fragile method of probability, an assumption that there is no case to answer and that the investigation must conclude that no breach has taken place, is the only objective and sensible recommendation that can be made.

Jane Martin

August 2018

Response to the Draft Final Report of the Local Investigation into Cllr Jane Martin

conducted by Duncan Milne and reported July 2018

- It is highly concerning that Ashford Borough Council has allowed these unsubstantiated and evidenced complaints to be escalated to this current position. At No time has there been an approach to seek resolution by mediation and at no time was I approached with regard to my preparedness to do so. This should always be the first step in any complaint.
- It is also very concerning that ABC have dealt with 3 separate complaints as one. Each complaint should have been dealt with separately and on its own merits. Linking these complaints together delivers a high degree of lack of objectivity and clearly demonstrates the high probability of of collusion amongst the complainants in order to ensure the complaints have a high degree of weighting. In allowing this to happen, demonstrates lack of objectivity on behalf of the investigating Officer.
- In my interview it was clearly stated that the investigating Officer considered the case to be particularly strong on the point of Facebook posts- indicating that his decision was made almost before the interview- a point borne out here in a decision based on probability.
- Telephone Interviews have been conducted with complainants and additional witnesses supporting the complainants, but no additional interviews have been conducted or requested with those who have been provided as supporting witnesses on my side. Evidence submitted by me has formed no part of this report.
- Proper process has not been followed in their creation and submission, and information contained within them has, in some cases been unlawfully obtained, in a manner, that should these complaints go further, may have serious ramifications.
- The claims themselves are in the majority of cases untrue and lack clear evidence of wrongdoing and are clearly based on personal dislike of myself and my approach to my role as a local Councillor, and without any objectivity or integrity. A decision has been made based on probability, without any tangible and unequivocal evidence. The complaints are in many instances, poisonous, petty, spiteful, divisive and defamatory as to my person, character and work as a local Councillor and are highly damaging. They demonstrate that robustness in carrying out my duties to challenge, debate, question process and governance is being interpreted by some as personal attacks. They demonstrate without question that a political smear campaign has been waged.
- C has disregarded the Investigating Officers instruction to deal with the investigation confidentially. C has made it public that an investigation is being carried out and that I am the subject of that investigation. Such behaviour is a dereliction of duty, abuses C's position and renders this investigation void.

## Methodology

2.1 Written confirmation of the permission granted by H for H's comments to be used in this investigation and for these to be shared with all those listed on this complaint. H needs to be provided

## 3. The Summary of Allegations and Relevant parts of the Code of Conduct

3.1 The use of a Facebook post WITHOUT the consent of those featured is a clear breach of the Human Right Act Article 9 and 10. The post used here seeking to incriminate me is in a PRIVATE Facebook group and has violated not only my rights, but those of a number of others who have not given their permission for its use. These people speak frankly in a forum that they consider is private. In using the posts as evidence to find me guilty of a breach of the code, the Parish Council and the Borough Council breach the privacy of a number of private citizens. I consider that the use of this information, originally raised for the purposes of the bullying complaint, is still subject to consideration in order to give the other unsubstantiated claims of other posts, some kind of substance.

## Evidence

### 5.1 Misleading and Biased

- None of the relevant material submitted by Cllr Martin is appended- only that supporting the complainants.
- At no time does the investigation offer clear examples of what brought him to his assumption or suggest mediation or an alternative form of resolution. At no time does he mention that Cllr Martin has made previous approaches to both the Borough Council monitoring Officer and to the Parish Councils to try to seek a round table resolution to any issues that may have been concerning members of the PC. This demonstrates a preparedness to resolve the challenges at hand by Cllr Martin.

"matters seem to have been brought to a head by issues connected to the  
in what evidence is this assumption based?"

- Cllr B recollection "forgets" to mention that B and the Parish Council ALSO unanimously supported the And paid money towards its creation. This would refute assessment that the issue was the
- Cllr B comment that I "had always been keen on promoting the misleads and suggests that I was working for my own benefit. Largely ignored in my own submissions, was clear evidence that I was promoting a tool to support the wishes and concerns of the residents I serve. I was in short carrying out my job as a Councillor representing the residents in my constituency.
- This complaint is not about the - it a personal attack on me and my work as the BC and is using the as an mechanism to argue against me.
- The issues with D Parish Council began immediately C prior to that the relationship had been a very good one.

- , I have been spoken to disrespectfully in parish Council meetings, criticised personally in emails and to members of the public, criticised on social media and publicly defamed in at least 2 publications circulated to residents of D and beyond. Evidence of this was submitted in my response, but has been added to by a recent publication by C
- The investigation seeks to link all the complaints to the and to suggest that my relationship with these 2 PC's was soured because of the This is mere supposition and if anything, demonstrates both Parish Council's inability to behave professionally and objectively. Even if the Parish Councils were unhappy with my working for the their professionalism should have been uppermost in recognising that I was merely following the interests of the residents

#### Supporting evidence

- ✓ Parish Council minutes
- ✓ Email from 27.10.16 from A supporting and contributing to creation of a leaflet promoting use of the ( now on behalf of A'S Parish Council, and residents and in support of my work
- ✓ Email thanking the Parish Council for their support in the public meeting on Sat July 16. 2016 where the PC were actively involved and paid the hall hire.
- ✓ Email 14.03.16 From B delivering evidence for the creation
- ✓ Cllr B signature on a petition supporting the
- ✓ Public meeting with 110 attendants on Sat 4<sup>th</sup> Nov 2017
- ✓ Email from F

#### 5.2 Misleading

- I were appointed in the first instance by G Parish Council I paid them 2 or 3 instalments out of my ward member grant for the as did the then KCC member J

#### Supporting evidence;

letter from I 06.04.2016

Email from A 13.04.2016

- I recommended, once ABC stopped short of including the in their local plan, that representation to the Inspectorate would be a sensible and good next step I invited all PC's in Saxon Shore to a meeting in 2017, to discuss. G attended, D did not and did not respond to the invitation. P, Q & R attended and the minutes of that meeting were circulated subsequently.
- The was part of the submission to the Ashford Local Plan, and as such this chapter has not yet closed. As a local Councillor, it is my duty, particularly when more than £5000 of public money has been spent, part of which was my ward member grant, to see the project through to its logical conclusion. The request for £500 from each parish Council was

to finish the job begun and to get the best value for residents. This is thinking in the best interest of the public I serve and doing my job as best I can to represent their wishes.

### 5.3 Misleading - Alleged Facebook post of 19<sup>th</sup> August.

- C fails to produce any factual and tangible evidence, apart from embellishment that is borne out of C's clear dislike for me, both personally and in my capacity as a Borough Councillor.
- I have strong cause to believe that there has been considerable collusion in the creation of the so called supporting evidence from E and F
- F appears to have entered the proceedings very late – first in April 2018 – at no stage was I informed that F had been part of the complaint, and the correspondence has only just been made available to me.
- **Appendix 9 of the Investigating Officers notes** The Purported text message from F has had its date and sends details removed and could have easily been sent yesterday.

**This is not evidence and it is extremely concerning that an investigation is relying on such documentation in this case.**

1. C admits that C has not taken a screen shot.
2. Nor had F
3. Nor had E

In probability terms I would contest that if a potentially slanderous or defamatory comment had indeed been made one of these 3 would have taken the few seconds to either: *Copy, Print, Forward, Screenshot, Scan, or simply call someone who could have done any one of the above.*

The probability is therefore, that this has not happened because there was no slanderous evidence to collect. The truth is that this did not happen because there was nothing incriminating to copy.

**This complaint is nothing other than a very damaging, divisive, spiteful attempt to discredit me and my work as the Borough Councillor.**

- F an also not be considered a reliable witness when it comes to me. Evidence I laid before the monitoring officer following our meeting, clearly showed his dislike for me and F email sent to all parish Council members claims *"most of the parishioners don't know her and those that do don't like her!"* It is notable that F attended acting school and is I suggest providing a good performance here with clear untruths.

Hardly and objective viewpoint and one given publically in 2016 Email again submitted here as evidence from 29.01.16. An investigating officer, aware of these facts, should be considering interviewing others in particular, those who have come forward to support my side of events. The Probability that F would go out of F's way to discredit me must be very high based on this evidence

The Probability of a complaint from a number of the 1799 members of the group where the purported slanderous comments were made must be quite high, I am sure the monitoring Officer would agree. Given that more than one year after their supposed posting, no one apart from 3



members of the Parish Council have made the complaints is notable. If I had made such defamatory and slanderous statements as is claimed, **probability**, would result I would suggest, in many more complaints and indeed a copy of what was said.

- The second entry posted on my own page is not relevant here as its use clearly breaches ECHR articles 9 and 10 Letters sent as evidence; show clearly that members of that group featured in the posts were not asked for permission before the posts were used. I myself, as a subject of in the post, part author and administrator of the group, were not consulted at any time prior to the unlawful use of this material.

### 5.7 Misleading and biased relation of events.

No one claims that a post was not made on or around 19<sup>th</sup> August.

However, the investigation misleads when it states that several witnesses evidence the detail.

1, A and B s just speculation and should not be admissible even in commentary.

2. C and E have recounted their own viewpoint in language and syntax that I do not use to suit their own agenda, clearly colluding along the way.

3. There is no evidence F ever saw anything and the "evidence " may have been produced yesterday.

E is very aware of what steps need to be taken when seeking to incriminate someone such as here. It is remarkable how this investigation relies so heavily on view, whilst failing completely to interview those who have clearly stated that my responses to the post were in no way a breach. As supported in the letters submitted from K, L, H, N & O

Given the reliance on **Probability**, the accounts from 5 witnesses supporting my side of events and casting doubt on the manner in which evidence has been obtained, should outweigh the accounts however detailed from 2 others and a latecomer.

### 5.9 & 5.10 Untruth

C has a "clear recollection"

- C failed to mention that C has an orchard of half an acre at the bottom of C's garden – something C should clearly have been able to recall.
- C also failed to take, make or ask someone to make a copy of the said comments, despite having at least 3 hours before the post was purportedly removed. Something it is highly probable C would have done if a breach really had taken place.
- C clear recollection that I claimed "as a landowner, C could be working to serve C's own best interests" is contrary to the many comments I have made publically about D Parish Council, D's own input into the as borne out in the supporting evidence.

- C also forgets to report that F had immediately sent him a text- a text that strangely only appears on 18<sup>th</sup> April with no evidenced send date. F text is inadmissible as no proof of when it was sent has been submitted and it could have easily been sent yesterday to back up these spurious claims. In addition, F only suddenly appeared as a "witness" some 7 months after the fact- a strange point given that F purportedly sent a text immediately.

The degree of unprofessionalism displayed by C, E and F is a clear indication of:

- ✓ their inability to discharge their duties in line with the 7 principles of public life
- ✓ A clear misuse of Parish Council position
- ✓ A direct example of spiteful, divisive behaviour directed at me.

#### 5.11 Misleading

H was not a counter argument and again this comment is misleading At the time of writing, I have seen no confirmation that H has consented to H's conversation being used within the context of this investigation.

#### 5.12 Unsubstantiated

The Investigating officers considers that *"on the balance of probabilities it is more likely than not that what was posted was in line with what the three witnesses quoted, and especially in line with E 'ecollection"*

The "evidence" submitted to back up this assumption demonstrate:

- Supposition is not evidence
- Bold claims from people who have colluded to gain collective argument to substantiate probability is however not evidence
- No evidence exists that any of the claimed witnesses at all saw anything untoward or worthy of a claim of breach
- Unsubstantiated evidence such as a photocopy without send date, being used to quantify probability is not evidence
- Hearsay from 2 people who are unable to prove that they have not corroborated is not evidence
- He said she said is not evidence
- The second Facebook posting has no place here and is merely being used to pad out an entirely fabricated complaint.

#### Conclusion

No evidence has been produced to back up the claim of a breach of any part of the Code of Conduct and as such this complaint should be dismissed for failure to produce adequate evidence.

Jane Martin August 2018

**REPLY TO RESPONSE MADE BY COUNCILLOR JANE MARTIN TO THE DRAFT FINAL REPORT  
IN WHICH SHE WAS THE SUBJECT MEMBER.**

Thank you for your email of 31<sup>st</sup> August 2018 and attached responses to the Draft Final Report. In replying to the same I will as previously stated also deal with the points you make in relation to your witness evidence in your email of 30th July 2018.

That witness evidence was not included as part of the Draft Final Report in view of the fact that it is written more in the form of a set of testimonials, giving general information as to character and as such is in reality of very little evidential value.

In your main response reference is made to the evidence of H in relation to this investigation and I must inform you that following on from that and representations made by H I have decided to remove the notes of interview referring to this evidence from the Final Report and any reference to the same in the Final Report itself. In my view the information provided is in any event again of very little evidential value.

In taking this action I must, however, make it clear that any personal data which has been processed in relation to these Standards investigations has been so processed in accordance with the provisions of the Data Protection Act 2018 and the GDPR. In particular but not exclusively a lawful basis for processing personal data is provided by the Public Task Provision of the GDPR.

With regard to the testimonials I note that H has provided a 'To Whom It May Concern' testimonial on behalf of you dated 20th October 2017 containing similar information to the withdrawn notes of interview. This information will accordingly not be used in conjunction with the investigation for the same reasoning unless I hear from to the contrary.

Similarly, with regard to the remaining testimonials of K, L & M in view of the fact that you have raised the issue again and despite their limited evidential value I have decided to include the same as an attachment to my reply in the interests of completeness.

In my view the other points you make in your detailed response do not raise any new issues or evidence but merely emphasise your disagreement with my interpretation of the facts as investigating officer. Indeed, many of the arguments put forward have been rehearsed before during the course of the investigation and are answered in the Draft Final Report.

I would also like to draw to your attention that the civil burden of proof which is on the balance of probability applies to all Standards investigations.

I must therefore inform you that having considered your responses in their entirety I do not wish to alter my conclusions in any way and that the Draft Final Report accordingly becomes the Final Report. A copy is attached for your use and the only changes are the removal of the word Draft, change of date to the date of issue and the removal of the notes of

interview relating to  
body of the report.

H evidence and reference to the same in the main

The Final Report will now be considered further by the Monitoring Officer in consultation with the Independent Person of Ashford Borough Council together with all responses to the Draft Final Report and my reply to the same.

W D Milne  
Investigating Officer  
3<sup>rd</sup> September 2018.

**T**  
**[Redacted]**

To: Whom it may concern.

I write to offer support to Cllr Jane Martin. I have known Jane for the past 6 years and have worked with her during my time as a Parish Councillor in **G**. Cllr Martin has always acted in a professional manner and has been a great support within our village. She has always been available to the residents and has initiated open forums and meetings within the parish to inform residents of prospective building works and to talk about

Since stepping down from the Parish Council I have attended a few of the meetings and have witnessed the total lack of respect that the PC has shown for their Borough Councillor and have been embarrassed at the conduct of some of the Parish Councillors who seem to totally disregard Cllr Martin. In my view, Cllr Martin has gone above and beyond in her efforts to serve the Borough and more particularly the village of **G**.

I wish for Cllr Martin to remain as our Borough Councillor in the coming years as we, as a village, face some very challenging times with proposed developments and I feel confident that with Cllr Martin guiding us we will reach a positive outcome.

**L**

**[Redacted]**

7 March 2018



5<sup>th</sup> April 2018

To Whom It May Concern

I first met Councillor Jane Martin following our move to G in 2013. I contacted her in 2014 when our village was facing a threat of proposal of solar installation. I was very quickly impressed with her dedication to her ward and our village in particular, with how hard she was working for her residents and how committed to her role as our Borough Councillor she was and continued to be.

It was particularly hurtful therefore to witness on several occasions appalling way in which our Parish Council was treating her both in public and in private. I observed this both as member of public and as a parish councillor myself. Some, now former, members of the parish council were publicly rude and patronising, the parish clerk was following the suit very closely and this only escalated when A was appointed.

I was also a witness of appalling comments regarding Councillor Martin during a "private social gathering" organised by A when I was still a member of the Parish Council. I had been so shocked and disgusted with the behaviour of some of the councillors present there that I resigned the following day. I did feel very strong that their conduct had been substandard and I was not prepared to work with group of individuals who clearly let their egos run before acknowledging how important Councillor Martin is to our residents and who are prepared to fail to see her qualities.

I feel that since A her personal dislike of Councillor Martin clouded her conduct and her behaviour in public is, frankly, totally unacceptable and some of the councillors seem to treat this as a carte blanche for their own disrespectful behaviour.

I was totally shock to be informed that Councillor Martin was a subject of code of conduct complaint following some utterly trivial comment on Facebook. I did read the post myself and followed it with a "like" and, although I cannot recall exact post (which demonstrates further that it was all much ado about nothing) I certainly did not find it offensive in any way. I am very much against any trolling so often presented on social media sites that, should I thought it was something inappropriate, I would certainly address it with Councillor Martin and report it to Facebook myself (as I have done in the past with posts of other Facebook users that I did found inappropriate, I also reported some to the Police as I thought they were in the area of criminal law).

I have commented on number of posts from Councillor Martin in the past and I never considered any of them disrespectful to anyone or inappropriate in any way in fact she is always very balanced in her opinions and quite often trying to calm other people when discussions/posts get too passionate/heated. I am rather appalled therefore that public money and Councillor Martin's time are wasted in entertaining this ridiculous complaint when, in fact, it's the complaining party that should look bit closer to home and examine their own behaviour and attitude towards the Borough Councillor who only wants to deliver best for her ward and residents.

I am also aware that some Facebook posts were provided by the complaining parties as some sort of support for their claims. I would like very strongly raised by objection to this as these were posted on a closed Facebook forum and I did not give anyone (especially from outside this group) my permission to use them or quote them in any way. I believe this constitutes a breach of a reasonable expectation of privacy and protection of my correspondence under Art 8 of the European Convention on Human Rights and, potentially breach under Regulation of Investigatory Powers Act 2000 (RIPA).

I cannot stress enough how valuable work that Councillor Martin dedicated to our village (and other areas in Saxon Shore ward that she looks after) is. It is with great sadness I observe how hard working, good and dedicated people are treated by these who are less willing to selflessly serve their communities and who feel they are therefore need to act against people like Councillor Martin.

Yours faithfully,

[REDACTED]

Sent from my iPad

M 09.04.18

Sent from my iPad

To whom it may concern.

I would like to express my opinion regarding Cllr Jane Martin. I first met & worked with Cllr Martin when I served on [REDACTED] Parish Council and I always found her very professional and passionate about her role as a Borough Councillor she always went the extra mile to help with any issues and nothing was ever too much trouble.

Over my time as a Parish Councillor we had some tough issues to deal with at which Cllr Martin's help and advice was invaluable.

I have always found Cllr Martin very efficient in her report writing also making sure parishioners were updated with any local news developments via social media or leaflets which she would make sure were delivered around the villages to get maximum exposure.

I also follow Cllr Martin on Facebook and I have never found her posts to be inappropriate or provocative even when some of the posts to Cllr Martin are quite frankly rude. Cllr Martin always replies in a calm measured informative manner.

I can only reiterate how hard working and professional Cllr Martin conducts herself and she takes her role as a Borough Councillor very seriously.

M  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

Profile Picture

Last account activity 12 months ago

Settings

