

**SLOUGH BOROUGH COUNCIL**

REPORT OF AN INVESTIGATION UNDER SECTION 66 OF THE LOCAL GOVERNMENT ACT 2000 AND REGULATION 5 OF THE LOCAL AUTHORITIES (CODE OF CONDUCT) (LOCAL DETERMINATION) REGULATIONS 2003 (AS AMENDED) BY KULDIP CHANNA, (KC) (LITIGATION SOLICITOR) APPOINTED AS INVESTIGATION OFFICER, BY MARIA MEMOLI, THE MONITORING OFFICER INTO AN ALLEGATION CONCERNING COUNCILLOR BALVINDER SINGH BAINS.

## **1. Introduction**

- 1.1 Fariba Ismat, (FI) Planning Technician in the Green and Built Environment Section of Slough Borough Council (SBC) made a written complaint to the Monitoring Officer of SBC. The complaint is undated. (Document 1).
- 1.2 In summary FI alleged that on 23 March 2010, Councillor Balvinder Bains' (BB) conduct, at a meeting to discuss a planning application in respect of 17 Lascelles Road was unacceptable. The meeting was attended by Chris Smyth (CS), Development Control Team Leader, Mr Taj Bansal, (TB), the Applicant and his Architect Mr Mackroy. Briefly FI alleged that BB: a) was intimidating and insulting towards her in that; b) her professional comments were ignored on at least two occasions during one of which he said, "keep your comments aside and don't compare other streets to the subject street"; c) BB indirectly told her to shut up and let the others at meeting concentrate on the application and BB addressed her manager above her head; d) she felt embarrassed, and offended by BB's conduct and felt he created a sexist attitude and manner when he spoke to her; e) BB was insistent on pushing her Manager to compromise about the application.
- 1.3 On 28 April 2010, the Standards (Assessment) Sub-Committee, considered the complaint from FI and decided to refer the complaint for investigation. The Sub-Committee also noted that FI had not particularised the breaches of the Local Code of Conduct ("the Code") and as a consequence identified the following paragraphs which may apply to the alleged conduct:-
  - (a) "You must treat others with respect", contrary to paragraph 3(1)
  - (b) "You must not bully any person", contrary to paragraph 3(2)(b)
  - (c) "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute", contrary to paragraph 5
- 1.4 The Decision Notice in respect of FI's complaint is at Document 2.

## **2. The Process**

- 2.1 As part of my investigation I conducted face to face interviews with the following witnesses:-
  - (a) The Complainant Fariba Ismat (FI) – interview statement dated 17 September 2010, (Document 3),
  - (b) The Senior Officer, Chris Smyth, (CS) – interview statement dated 15 September 2010, (Document 4),
- 2.2 Also as part of my investigation I wrote to TB and Mr Mackroy on 13 August 2010. However I received no response from either of them within the deadline (by 23 August) set in my letter. On 6 October following my interview with BB during the general discussion about witnesses, he commented that perhaps they had not received my letters or had insufficient time since August was generally a holiday period. On 6 October I therefore, wrote again to TB and Mr Mackroy. TB and Mr Mackroy provided a response on this occasion.

- 2.3 I interviewed by telephone TB, the Applicant - interview statement dated 12 October 2010, (Document 5)
- 2.4 Mr Mackroy provided me with some comments over the telephone. A file note (dated 11 October 2010) of his voicemail message dated 8 October 2010 is at Document 6. However I did not pursue a formal interview with him as I believed that I had sufficient information about the meeting for the purposes of this investigation.
- 2.5 It may be noted that all the witness statements are signed except for TB's statement. In my covering email of 12 October to TB I requested that a response be provided within a certain time frame (by 22 October) and if no response was received by the deadline set then it would be deemed that he had no objection to the information as set out in the statement. I did not receive a response from TB.
- 2.6 I conducted a face to face interview with BB and his interview statement dated 6 October 2010, is at Document 7.
- 2.7 It also needs to be noted that I wrote to BB on 23 June 2010 advising him about FI's complaint. On 28 June 2010 BB responded by telephone to my initial contact letter. BB wished to apologise for any offence caused to FI as he believed she was a note taker at the meeting. He had not realised she was the Case Officer. BB further advised me that in his employment he represented four Trade Unions and he was very aware of being customer focused. BB did not feel he had been sexist at the meeting. BB said that he has loud voice and that can be misunderstood at times in meetings. He was very saddened that FI felt he had been or that he had inadvertently come across in this way to FI. He was willing to apologise to FI in front of CS but not anyone else at the meeting. My file note dated 28 June 2010 is at Document 8.
- 2.8 On 28 June 2010 I wrote to FI explaining BB's offer of an apology.
- 2.9 Following the clarification of the investigation process by me to FI, on 13 July 2010, she advised me that she wished to continue with the formal complaint and did not wish to accept BB's offer of an apology. She felt that the apology was insufficient as the damage had already been done to her and that she had been "belittled in front of three people and nothing would reverse the situation" for her. FI's email requesting that I proceed with the investigation is at Document 9.

### **Statutory Framework**

- 3.1 The Relevant Authorities (General Principles) Order 2001 sets out the principles which are to govern the conduct of Members and two appear relevant to the complaint in question. This is:-

#### **"Respect for Others**

*Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees."*

- 3.2 The Council adopted its current Local Code of Conduct for Members (“the Code”) on 21<sup>st</sup> May 2007.
- 3.3 All Members who are elected to office must sign a “Declaration of Acceptance of Office” before they can officially act as a Councillor. In that declaration they undertake to observe the Code as to the conduct which is expected of Members of the Council.
- 3.4 BB was first elected to SBC Council in May 2003 for a period of one year. He was re-elected to SBC in 2006 and again for a further four year period in 2010. BB signed his declaration of acceptance of office on 12 May 2010.
- 3.5 During his membership of SBC BB has attended the following training sessions on the Code:

12 <sup>th</sup> May 2003	Local Code of Conduct & Data Protection
9 <sup>th</sup> May 2006	Local Code of Conduct & Member/Officer Relations Code
1 <sup>st</sup> October 2007	Revised Local Code of Conduct/Ethical Framework/Member Officer Relations Code
3 <sup>rd</sup> November 2008	Local Code of Conduct
12 <sup>th</sup> May 2010	Local Code of Conduct & Member/Officer Relations Code

- 3.6 The Code is split into three parts:-

Part 1 is relevant and entitled, “General Provisions” and “General Obligations” of which paragraphs 3 and 5 are relevant for the purposes of this investigation. Paragraphs 3 and 5 state:

**paragraph 3(1)**

“You must treat others with respect”

**paragraph 3(2)(b)**

“You must not, bully any person”,

**paragraph 5**

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

- 3.7 It is helpful to refer to the Code of Conduct, Guide for Members, May 2007, (“the Guidance”), from the Standards Board for England (“the Standards Board”) on treating others with respect, bullying and bringing the elected office or Council into disrepute.
- 3.8 It is against the Guidance and these General Principles and the provisions of the Code that I have investigated the complaints.

### 3.9 Information about the planning application meeting on 23 march 2010:

The purpose of the meeting was to discuss the planning application and recent planning guidelines. The application had been dealt with by FI. Generally at SBC, it is a usual process to have these types of planning meetings between Applicants, their Architects/ Agents, Case Officers and Senior Managers. The meeting was held at St Martin's Place. The meeting room was not a big room. It is not very clear how the meeting room was arranged but it appears that BB sat at the head of the table; Mr Mackroy and TB sat at one side opposite CS. FI sat at one end of the table possibly to the left of CS and possibly opposite TB and Mr Mackroy. The evidence about seating arrangements is understandably patchy and not consistent between the witnesses. Witnesses do agree there were no formal introductions at the beginning of the meeting. Evidence suggests that in view of the fact that the parties were familiar with each other no names were provided and no job titles indicated but a simple greeting with possibly hand shakes between the parties took place in the reception area of St Martin's Place. In the meeting room, it is unclear how or who started the meeting off. Although it may not be appropriate to do so in these types of meetings, I note no Chair was appointed to facilitate the meeting and there are no formal minutes of the meeting. However, there is some agreement between the witnesses that most of the discussion took place between BB and CS with others contributing as they felt necessary.

#### 4. (A) Material Findings – You must treat others with respect

##### 4.1. **BB's conduct towards FI: BB ignoring her professional comments on at least two occasions during one of which he said, "keep your comments aside and don't compare other streets to the subject street"; BB indirectly told FI to shut up and let the others at meeting concentrate on the application and BB addressed FI's manager above her head;**

- (a) In her statement, FI says that in these types of meetings she lets her Manager talk and generally only expresses her opinion "*if and when I need to supplement our argument in support of our decision.*" (p1, par4). FI further states that she concentrated on the discussion sometimes she looked "*at the person speaking, sometimes at the plans and sometimes at the table.*" (p2, par8). In paragraph 9, FI refers to part of the meeting when she first felt her point was ignored by BB. She felt he made no eye contact with her or make an effort to listen to her. She states that CS noticed this and elaborated her point to BB. FI states that at paragraph 12 that, BB held, "*his hand towards me indicating a stop gesture and said "keep my comments aside and that we should not compare other streets to the subject street and that we should only concentrate on number 17 Lascelles Road."* At this point I felt belittled and embarrassed. I felt that he was being dismissive of me and my point again". On the basis of this FI kept quiet for the remainder of the meeting. FI further states that she did not take notes at the meeting, (p1, par5). FI was "*upset*" about BB being "*dismissive*" towards her at the meeting and discussed it with CS after the meeting. She confirms that CS was "*supportive*" and "*disapproved*" of BB's attitude to her in the meeting. (p3, par15).

- (b) CS states that *“the majority of the discussion was directed”* at him. And that *“Fariba did not take part in the discussion for the majority of the time.”* (p1, par3). CS further confirms that towards the middle of the meeting, FI *“raised a relevant point”* but that BB *“responded immediately and was very abrupt and dismissive of her view”* (p1 par 4). CS notes that BB had *“elements of abrasiveness in his tone”*. (p1, par4). CS states that there was probably merit in what BB said about not comparing another case to the property which was the subject of this application, however, he did feel that *“the manner in which he responded to her was unacceptable.”* (p1, par5). CS felt sufficiently *“uncomfortable”* about BB’s manner towards FI to discuss it with her after the meeting and if she felt *“unhappy”* to complain about BB’s conduct at the meeting. CS felt that BB had *“belittled a member of staff in front of the Applicant, Architect”* and him, (p2 par6). CS only recalled one occasion at the meeting where BB spoke in this manner to FI, (p2, par6). CS states that from his experience of seeing BB at planning committee meetings, he is aware that BB *“can be quite abrupt with anyone and forthright in his views.”* (p1, par6). And that he has got used to *“his style and manner in which he puts his points across.”* (p1, par6).
- (c) TB states that *“Fariba talked about her site visit and the visual gap between the properties. Chris had not been to the site. He was relying on information from me and Fariba”*. Further that *“I think that both parties were able to put their case forward. There were different views and interpretations but everyone at the meeting were able to put their points forward.”*. And again *“I do not recall that Fariba was prevented from putting forward her points. No, I do not believe Councillor Bains prevented her from saying what she wanted to say. She was the Case Officer and she put the Council’s case.”* TB refers to his experience of meetings in his professional work where people have *“behaved very badly”* and states *“this was not the case here at all. There was nothing untoward about this meeting. There was nothing to suggest anything out of the ordinary except just two parties’ differences of opinion about the planning application.”* Further TB states that BB has *“a loud voice”* and *“is quiet animated when he speaks”*. TB suggests that some people may feel BB is *“brash”* but he believes that those are just his *“mannerisms”*. (p2,par14).
- (d) Mr Mackroy, in his brief telephone message, simply comments that, *“as to an incident, I can’t think of any incident at the meeting I was at; it was a perfectly normal planning meeting”*.
- (e) BB states that he had not met FI until this meeting and that he did not know she was the Case Officer. BB confirms that on one occasion at the meeting he did ask FI to let CS *“speak”* and deal with the case. BB states that he said this on the basis that his understanding was that FI was a *“note taker”* and CS was the Senior Officer with whom they had come to discuss the application

since the case had already been discussed with the Case Officer. *“I made the assumption she was the note taker”*. (p2, par8). BB further states that he has a *“strong and loud”* voice and that *“it may come across differently to people at meeting.”* (p2, par9).

**4.2. BB’s conduct towards FI: FI felt BB created a sexist attitude and manner when he spoke to her;**

- (a) FI believes that she was treated differently by BB. When he was dismissive of her, she believes that he was saying, *“be quiet woman”* and that BB’s attitude towards her was *“saying let the men do the talking”*.
- (b) CS recalls BB’s dismissive attitude towards FI. He recalls, FI being referred to as, *“Officer”*. CS does not recall any *“overt sexist language”* used by BB towards FI. (p2, par9).
- (c) TB comments in paragraph 13 that *“I do not think she was treated differently to anyone else at the meeting. Everyone was able to put their points, that’s what the meeting was for, it was an open discussion.”* (p2, par13). And further at paragraph 17 he states that he does not recall BB treating FI, *“differently or that he spoke to her in a different way to anyone else at the meeting. I did not come out of the meeting thinking that there was something wrong or someone was excluded from the meeting, absolutely not...I do not recall Councillor Bains saying to Fariba to let Chris speak. I do not recall Councillor Bains excluding Fariba from the discussion.”*
- (d) BB confirms that, he referred to FI as, *“Officer”*. (p2, par8). BB states at paragraph 11 of his statement that, he does not feel he treated FI, *“any differently because she was a woman”*. Further that in his employment and as an elected member and community leader he knows the importance of respecting an individual *“because I deal with so many different people of different gender, caste, creed, and religion”*. BB states that his Sikh faith has taught him *“to have the deepest respect for women and their rights as equals in all walks of life”*. (p2, par11).

**4.3. BB’s conduct towards CS about the planning application: BB was insistent on pushing CS to compromise about the application:-**

- (a) FI describes her experience of BB’s conduct at the meeting as being *“pushy”* with an attempt to *“persuade my Manager to compromise...”* about the application, (p2, par11).
- (b) CS confirms at paragraph 8 of his statement that BB’s general approach to planning meetings *“is to try and obtain a compromise.”* He further states that at the meeting he did not *“feel any more pressure than usual to change his views or relax the planning guidelines.”*
- (c) TB confirms at paragraph 10 of his statement that the aim of the meeting was to try and reach a compromise, *“This was the main thrust of the meeting.”* He further states that BB *“was asking the Officers to look at the case and reach a resolution”* (p2, par15). The principle they had in mind

was to avoid the case going to planning committee and causing him to await a decision for several more months. In the end TB states he was very frustrated with the meeting as it could have been *“more productive”* (p3, par16), and in the end the application was heard by the planning committee and it was granted, (p2, par15).

- (d) BB states that he was not asking CS *“to change his mind”* but to meet the applicant *“half way”*. He states that he appreciates CS has to make decisions within the planning guidelines and regulations. Furthermore BB states that he was trying to avoid the planning committee’s time being wasted if the application was a *“call-in”* and thus acting *“in the best interests of my constituent and the Council’s time.”* (p2, par9).

**4.(B). Reasoning – “You must treat others with respect”**

**1) BB’s conduct towards FI: –**

- a) It is accepted by BB that he did mostly refer to CS about the application as he believed he came to have a discussion with the Senior Officer. And further that he believed that FI was a note taker. He made an assumption about FI’s role at the meeting and he did not know she was the Case Officer. I do find that the lack of formal introductions at the meeting did not do much to help the situation. I do accept FI’s point that BB ought to have respect for the views of all SBC Officers regardless of their status, however at this meeting it is evident that in BB’s mind he had come to discuss the case with the Senior Officer and had not anticipated hearing any views from the Case Officer.
- b) BB does not accept that he was abrupt or sexist in his attitude when he asked FI to let CS speak and not refer to other streets but concentrate on the application road. However both CS and FI state that BB was *“dismissive”* of FI’s views at the meeting. CS does not refer to any sex discrimination against FI by BB. On the other hand TB states that he did not think there was any bad behaviour at the meeting but just a difference of opinion about planning issues. FI’s feelings about being treated differently are strong and have to be accepted as genuine. However my minor observation on this point is that it is possible that having felt *“belittled”* by BB, in her embarrassment she has read too much into the situation. At the same time it needs to be noted that there were no other women at the meeting and as such, whilst I fully acknowledge the awareness that most men working in an organisation such as SBC would have of sex discrimination, it is possible that any undercurrent of sex discrimination could have gone unnoticed by the men at the meeting. I also accept that because of BB’s Trade Union roles and his background that he would be more aware than most other people of ensuring that there was no discrimination against a woman. FI is the only one who refers to the raised hand gesture by BB indicating to her to stop when she was expressing her views. It is possible only she was aware of this movement of the hand as it was directed at her and no-one else noticed it. BB may be simply unaware of his



body language. However, it is notable that the evidence shows that BB referred to FI in neutral terms by calling her “Officer” and none of the witnesses recall any overt physical or verbal sexism by BB.

- c) Overall I believe the evidence shows and BB accepts that he may have inadvertently failed to acknowledge FI as the Case Officer and as such give due regard to her views. His view was that he came to discuss the application with the Senior Officer since the applicant and architect had already discussed it with the Case Officer.
- d) In view of the fact that I have found both BB and FI to be wholly genuine about their personal feelings about the meeting and the evidence from the witnesses being so evenly balanced I am unable to reach a conclusion on whether BB failed to treat FI with respect and whether BB had a sexist attitude towards FI.

#### **4.(B). 2) BD’s Conduct towards CS:**

CS’ own evidence shows that CS did not feel he was overly pressured by BB to reach a different conclusion on the planning application. CS accepts that BB’s approach is generally to try to reach a compromise. BB accepts that his purpose and that of the applicant for the meeting was to find some middle ground and avoid the application having to go to planning committee thereby saving time for both SBC and TB. BB accepts that CS has to work within the parameters of planning guidelines and regulations. CS did not overturn his original decision. I therefore do not find that BB failed to treat CS with respect.

#### **5(A). Material Findings – “you must not bully any person”**

- 5.1 Bullying can be a one off incident. Bullying can be offensive, intimidating, malicious, insulting or humiliating behaviour directed towards a weaker person.
- 5.2 CS dealt with the meeting without difficulty.
- 5.3 When BB spoke to her in the manner that he did FI did feel vulnerable as a woman but I am not entirely sure that in this situation she can be considered to be a weaker person. Witnesses do not refer to any words or actions which would indicate bullying at the meeting. BB’s own evidence suggests that his comment was based on his own unfounded assumption about FI’s role at the meeting. BB further asserts that he did not intend to cause offence and thus no intimidation, malice, insult or humiliation was intended by BB. FI did feel belittled and embarrassed but she does not describe any words or action which indicate she felt bullied by BB. FI did go quiet when BB asked her to let CS speak, however she remained in the meeting room and carried on with the meeting so I find that whilst she was upset she was able to cope reasonably well with BB’s comments. FI simply saw BB’s behaviour as rude and unacceptable.

5.4 I therefore make no significant material findings of bullying at the meeting since there is little evidence to indicate bullying.

**5(B). Reasoning - “you must not bully any person”**

5.5 I find no bullying conduct by BB as there is little evidence to show any bullying occurred at the meeting.

**6(A). Material Findings - “You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute”.**

6.1 I make no significant material findings that BB conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. I do note that evidence shows and BB accepts that he did not pay attention to FI’s views as he believed she was a note taker and he did not appreciate she was the Case Officer. I further note that FI felt “belittled” in front of the applicant, architect and her manager.

**6(B). Reasoning – “You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute”.**

6.2 I do not find that BB conducted himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. BB was acting in his official capacity at the meeting but the evidence shows that there was a debate about the application of planning policies and guidelines to a particular case. Whilst BB accepts he did not pay attention to FI’s views because he believed she was a note taker and FI felt “belittled” there is no evidence that this was of a level to bring his authority or office into disrepute. CS noticed that FI was upset and provided appropriate support to her. The matter on the whole was unnoticed by the applicant and architect as they did not consider anything out of the ordinary happened at this meeting.

**7. Conclusions and Recommendations**

7.1 I do find that the evidence is inconclusive about whether BB failed to treat FI with respect.

7.2 I do find that the evidence is conclusive that BB did not fail to treat CS with respect.

7.3 I do not find that there was any bullying by BB at this meeting.

7.4 I do find that BB’s conduct has not brought his office and authority into disrepute.

7.5 I make one observation in that the evidence suggests that although this was a formal meeting, it was conducted with a degree of informality. I think that if there had been formal introductions at this meeting and the purpose of the meeting and roles outlined at the onset then this situation may not have arisen. Also in my view the meeting needed to identify a Chair or Facilitator at the onset.

Furthermore formal minutes ought to have been taken in accordance with SBC's Constitution, Part 5.5, paragraph 5.8, which states, that, *"In accordance with the resolutions of the Special Meeting of the Council on 28 April 1999 a note will be taken of all meetings dealing with matters of significance between Members and Officers, setting out where appropriate, advice given and decisions taken and this note will subsequently be circulated to those present."* The evidence points to the fact that BB believed the meeting was to discuss the application with CS as the Senior Officer whereas FI clearly had expectations that her views as the Case Officer would be heard by BB. Furthermore whilst BB may be forthright in his views it may be helpful for him as an elected representative, attending such meetings as a "middle person" between constituents and SBC Officers, that at the end of a meeting he himself ensures everyone has had an opportunity to express their views by simply asking that question and listening to any further comments. I do have the impression from the evidence that overall this situation has arisen out of misunderstanding, miscommunication and a lack of clear practical steps for the conduct of a formal meeting.

- 7.6 I make recommendations for support to be given to both BB and FI to reach a mutual understanding about this matter in the interests of future working relationships between a Member and Officer.
- 7.7 I would like to record my thanks to all parties for the co-operation I have received in investigating this complaint.
- 7.8 In summary I conclude that:-
- a. I do find that the evidence is finely balanced and inconclusive as to whether BB has breached paragraph 3 of the Code in that he has failed to show respect for FI at the meeting on 23 March 2010.
  - b. I find that BB has not breached paragraph 3 of the Code in that he has not failed to show respect for CS at the meeting on 23 March 2010.
  - c. I find that BB has not breached paragraph 3(1)(b) of the Code, in that he has not bullied CS at the meeting 23 March 2010.
  - d. I find that BB has not breached paragraph 5 of the Code in that he has not conducted himself in a manner which can reasonably be regarded as bringing his office and authority into disrepute at the meeting on 23 March 2010.

**Date: 21<sup>st</sup> December 2010**  
**Kuldip K Channa,**  
**(Litigation Solicitor)**  
**Standards Investigation Officer,**  
**For and on behalf of the Monitoring Officer**

## **LIST OF DOCUMENTS ANNEXED TO REPORT**

- 1) Fariba Ismat's Complaint undated
- 2) Decision Notice SBC 17 dated 6 May 2010
- 3) Fariba Ismat - interview statement dated 17 September 2010
- 4) Chris Smyth - interview statement dated 15 September 2010
- 5) Taj Bansal - interview statement dated 12 October 2010
- 6) Mr Mackroy – file note regarding telephone message dated 11 October 2010
- 7) Councillor Balvinder Bains - interview statement dated 6 October 2010
- 8) File note dated 28 June 2010, of telephone conversation regarding the offer of an apology by Councillor Bains
- 9) Email dated 13 July 2010 from Fariba Ismat to Investigating Officer, regarding the request to continue the investigation,