

APPENDIX A (1)

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 BALWINDER SINGH DHILLON (SBC23).

1. Introduction

- 1.1 Steve Wagner, Grants Renewals Manager (SW) made a written complaint to the Monitoring Officer of Slough Borough Council (SBC). The complaint is dated 7 June 2010. (Document 1).
- 1.2 In summary SW alleged that on 26 May 2010, Councillor Balwinder Dhillon's (BD) conduct, during a telephone conversation was unacceptable. BD had telephoned the Private Sector Housing Team (PSH) at approximately 17:30/17:45 that day to enquire about two ongoing grant cases. During the conversation regarding one of the cases, BD became, "irate, raised his voice and was offensive and insulting" towards SW.
- 1.3 On 13 July 2010, the Standards (Assessment) Sub- Committee, considered the complaints from SW and decided to refer the complaint for investigation. The Sub-Committee also noted that SW 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", - paragraph 3(1)
 - (b) "You must not bully any person", - paragraph 3(2)(b)
- 1.4 The summary of complaint is at Document 2 and the Decision Notice is at Documents 3.

2. The Process

- 2.1 As part of my investigation I conducted a face to face interview with the following:-
 - (a) The Complainant SW on 22 March 2010 – interview statement (Document 4). SW also provided the following documents:
 - (i) Email dated 18 May 2010 from BD to SW, referring to information about the case,
 - (ii) Email dated 25 June from Manju Dhar, Private Sector Housing Manager (MD) to SW, (incorporating email response dated 24 June 2010 to BD from Denise Alder, Strategic Director of Green and Built, (DA); and an email from BD to Finbar McSweeney, Corporate Complaints Officer (FM) dated 26 May 2010)
 - (iii) SW's note of the telephone conversation on 26 May 2010
- 2.2 There was no face to face interview with BD as he advised me that he would provide me with a written response to the allegation:
 - a) 21 October 2010 – I initially wrote to BD providing him with the complaint documents and the process to be followed in the investigation. I received no response from BD. (Document 5)
 - b) 9 November 2010 – I was made aware by SW that he had received a direct letter of apology from BD as a consequence of which I wrote to BD to advise him that he should not be approaching SW directly about this complaint. (Document 6). I was also made aware that around about the

same week BD had also tried to contact SW by telephone, although the precise details of that are unknown as the call could not be taken by SW and BD did not leave a message.

- c) 15 November 2010 – I received an email letter from BD stating that he would like to make a written statement in respect of the complaint. BD's response was also noted in the same letter. (Document 7). The documents provided by BD consisted of 9 pages :
- i. Page 1 of 9 -Letter dated 15 November 2010. It consists of 4 paragraphs of BD's response to the allegation,
 - ii. Page 2 of 9- Letter dated 20 May 2010 from SW to Applicant,
 - iii. Page 3 of 9 – continuing paragraphs 5 to 7 of BD's response to the allegation,
 - iv. Page 4 of 9– BD's email to Denise Alder referring to her response about BD's complaint about SW,
 - v. Page 5 of 9 – further copy of letter dated 20 May 2010 from SW to the Applicant, plus paragraphs 8 to 10 of BD's response to the allegation,
 - vi. Page 6 of 9 – paragraph 11 to 21 of BD's response to the allegation,
 - vii. Page 7 of 9 – mostly blank except some email address details,
 - viii. Page 8 of 9 – BD's complaint to FM,
 - ix. Page 9 of 9 – paragraphs 22 to 24 of BD's response to the allegation.

2.3 I note that BD did not provide a copy of DA's email response to his complaint about SW. Considering the sequence of nine pages sent to me and page 7 of 9 being mostly blank I wonder whether DA's response should be noted there?

2.4 19 November 2010 I received an email confirmation sent on behalf of SW which stated that he would like to proceed with his complaint. (Document 8). I understood this to mean that SW did not accept BD's apology (BD letter of 25 October to SW) and he wanted me to carry on with the Standards investigation.

3. 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. These are:-

"Selflessness

Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

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 21st May 2007.
- 3.2 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.
- 3.3 BD was first elected to the Council on 10 June 2004 and signed his declaration of acceptance of office on 14 June 2004. He was re-elected on 3 May 2007 and made his declaration on 9 May 2007.
- 3.4 BD has attended the following training sessions on the Code:
13th January 2005 Lobbying & Dual Hattedness
5th December 2005 (Ethical Framework)
9th May 2007 Revised Local Code of Conduct & Member/Officer Relations Code
3rd November 2008 Local Code of Conduct
12th May 2010 Local Code of Conduct & Member/Officer Relations Code
- 3.5 The Code is split into three parts:-
Part 1 is relevant and entitled, "General Provisions" and "General Obligations" of which paragraphs 3 is relevant for the purposes of this investigation. Paragraphs 3 states:

paragraph 3(1)

"You must treat others with respect"

paragraph 3(2)(b)

"You must not, bully any person",

- 3.6 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 and bullying.
- 3.7 It is against the Guidance and these General Principles and the provisions of the Code that I have investigated the complaints.
- 3.8 I have also considered SBC's Constitution, Part 5.5 Local Code Governing Relations between elected Members and Council Employees. In particular Paragraphs 3.2 (d), (f) (g) (h) and 5.3 and 5.6:

Paragraph 3.2 (d), (f), (g) and (h) states:

“Officers can expect from Members.

(d) Respect, dignity and courtesy.

(f) Not to be subject to bullying or to be put under undue pressure. Members should have regard to the seniority of officers in determining what are reasonable requests, having regard to the power relationship between Members and Officers, and the potential vulnerability of Officers, particularly at junior levels.

(g) That Members will not use their position or relationship with Officers to advance their personal interests or those of others or to influence decisions improperly.

(h) That Members will at all times comply with the relevant Codes of Conduct.”

Paragraph 5.3 states

“Members are elected to represent the interests of their constituents, but they should not seek special treatment for any individual. When dealing with Officers, they must declare any special relationships they have with the constituents concerned.”

Paragraph 5.6 states that:

“Members should not bring or attempt to bring undue influence to bear on an Officer to take any action that is:capable of being interpreted as intimidation or bullying.”

3.9 Information established during the investigation about the circumstances of the telephone conversation:

- a. SW states that on 26 May 2010 at about 17:30/17:45, Private Sector Housing (PSH) received a telephone call from BD and SW answered the telephone as he was the only one in the office at the time;
- b. BD states that on 26 May 2010 at about 17:40, he received a telephone call from SW;
- c. SW was concerned about his telephone conversation with BD and wrote a note about it and sent it to MD, his Manager. The note is dated 26 May 2010.
- d. BD wrote a letter of complaint about the case and the telephone conversation with SW to FM. The complaint letter is dated 26 May 2010. (DA, responded to this complaint on 24 June 2010).
- e. BD’s query concerned an application for a Disability Facilities Grant (DFG) from the Home Improvement Agency (HIA) based in the PSH Section at Slough Borough Council (SBC). The grant is for adaption of a residential property for use by a disabled person.
- f. The DFG process commences with the submission of an application by a disabled Applicant. Various assessments are made including occupational health and financial.
- g. The Applicant is placed on a waiting list which usually means several years on that list. Applicants are made aware that there may be a long waiting period before a grant is available.
- h. The HIA will undertake adaptation works through approved contractors if Applicants request it. The HIA charges a fifteen percent fee for this service. Applicants can also arrange a private contractor if formalities are completed with the HIA for example the provision of three quotations from reputable contractors. The grant funds are paid directly to the Applicants if a private contractor is used. If direct payment is made to the Applicant the HIA is obliged to ensure that there is proper use of the funds since public money is being provided for the works. It is clear that it is inevitable the

process will take time. SW states that on average most grant authorisations where the Applicant wants to use a private contractor are completed within six months. The reason for this appears to be because of the need for technical specification of the works and various planning and building regulation requirements.

- i. The Applicant in this case had been on the waiting list since November 2007. A change of circumstances was notified to the HIA in December 2009.
- j. This Applicant's initial financial assessment was on 25 January 2010. From the papers I note that BD made enquiries about it on 18 and 26 May 2010. This case was still within the six month time limit of the HIA process when BD made enquiries about it.
- k. This Applicant wanted the works done by their own private contractor. HIA would provide the technical specifications.
- l. HIA sent a letter to the Applicant on 20 May 2010. HIA expected a response from the Applicant that the conditions set out in the letter were agreed. The letter does not contain an explicit sentence requiring the Applicant's agreement.
- m. During the telephone conversation, SW attempted to explain the HIA's process and that the Applicant had to accept the conditions set out by the HIA and the Council's obligations about ensuring that the relevant building control, planning and other specifications are followed by the Applicant.
- n. BD states that he was trying to say that he had permission from the family to say that they agreed to the terms. However in BD's view the letter did not say that a written response was expected from them confirming their acceptance of the terms.
- o. BD believes that the DFG had been delayed due to HIA Officers being, "*often un-contactable, not available or on leave*" (Response p1) . BD felt disappointed by what he believed was the lack of progress about this grant application. He believed the Applicant had been on the waiting list for four/five years which was a long time.
- p. SW states that BD told him what his job should be and what he should do to "*move the project along*" (SW's telephone record 26 May 2010).
- q. BD believes he was asking SW to ensure the HIA sent the technical specifications as soon as possible since the family had waited long enough and they needed those specifications to obtain the estimates.
- r. BD does not accept he was "*speaking over*" SW. (Response p5)
- s. SW states that BD kept "*cutting him off mid sentence*". (SW's telephone record 26 May 2010).
- t. During the conversation SW comments that BD had said during the conversation that he did not understand "his grammar" although BD did not elaborate on this when SW asked what he meant by this comment. SW himself states that he had difficulty in understanding BD because of his accent.
- u. SW states that BD raised his voice and then proceeded to make the comment that "*the only nice person in the team*", was MD, at which point SW was offended as he felt it was an unacceptable comment about him and the HIA team members. He stated he would put the telephone receiver down and then he did so. (SW interview p3 par10).
- v. There was confusion in the case as it was unclear if the Applicant wanted to deal directly with the HIA or whether he was represented by BD. Both seemed to be contacting the HIA about the same issue.

- w. From general SBC knowledge, I understand the HIA is a recognised Agency and an award winning Section of PSH at SBC.

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

4.1.

- (a) SW states that he attempted to explain the grants process to BD (page 2, par.7), however BD *“kept on cutting me off mid sentence...”*; further that he *“raised his voice”*;
- (b) SW states at page 3, paragraph 10 that he believes that *“the manner in which he approached the casewas very disrespectful...”* BD’s tone of voice was aggressive and that, *“indeed this aggressive tone had commenced almost immediately during my conversation with him”*; further that he detected *“anger”* in his voice,,
- (c) SW felt *“deeply offended”* by BD’s reference to another Manager as being the only *“nice person”* in his team. He felt it was a particular *“insult”* to his team.

4.2. **The conclusions which SW drew from BD’s comments were that:**

- (a) BD did not understand the HIA’s process;
- (b) BD believed it was a *“simple case”* when it was not and needed to follow a set process;
- (c) BD wanted the HIA to *“escalate the process in respect of this case, (p1, par.2);* he felt this was an inappropriate intervention on a particular case by an elected Member;
- (d) BD thought some staff were *“nice”* and others were not and he felt this view held by an elected Member was insulting to him and the HIA team as whole.
- (e) SW felt that a process could not be *“short circuited on the say so of an elected member”*, (p2, par.9);
- (f) SW further believes that the approach of BD was such that it was of a level where it was *“bullying”* as a junior member of staff may not have been able to deal with this attitude, (p3, par9).

4.3. **BD states that he was attempting to:**

- (a) Request an update for the progress of the case;
- (b) Say that the letter of 20 May 2010 to the Applicant did not state it required a response from Applicant;
- (c) Say that the process had already taken too long, as the Applicant had waited four to five years;
- (d) That he had authority from *“the family”* to confirm acceptance of the conditions and SW should proceed to supply the specifications since without them the family could not obtain the relevant quotes;
- (e) That his dealings with MD have always gone well.

4.4. **The conclusions which BD drew were that:**

- (a) The family had already had to wait too long for the DFG,
- (b) The work was straightforward with some draining, plumbing and a front window,
- (c) HIA Officers had further delayed the process by not being available or contactable or on annual leave; the *“Officers were not as helpful as they could have been”*; (Response p9).

- (d) HIA process is “inadequate”, there is too much paperwork and dealt with in a “*drip feeding*” manner and that the family feel, “fobbed off by the Council”; (Response p9).
- (e) Letter of 20 May 2010 was not clear that the family needed to advise the HIA they accepted the conditions,

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

4(B).1. I find that on balance of the evidence BD did not treat SW with respect for the reasons set out below:

- (a) SW is a senior member of staff and an officer with some ten years experience at SBC and used to dealing with elected Members including Members of Parliament, and therefore SW is clearly able to assess situations involving elected Members and his evidence is that he found the manner and approach of BD aggressive and unacceptable;
- (b) SW’s evidence further points to the lack of understanding by BD about the grants process and this is confirmed in BD’s own emails about the case. BD did not understand the process and did not attempt to do so. The reference to the family and their authorisation is of concern since the DFG is available to a disabled Applicant not the family. BD makes no reference to the Applicant at all.
- (c) The email evidence from DA about the work of the HIA would show that it is difficult to accept that it is an inadequate system;
- (d) The evidence points to BD having “overstepped the mark”, whilst it is accepted he might want to make enquiries on behalf of a constituent, however it seemed more of a demand about what SW should do to progress the case; this point is particularly more acute because it is clear from DA’s email of 26 May, that MD had already explained the full facts and process to BD that same day.
- (e) BD’s comments are contradictory. If he wishes to maintain his point that the letter of 20 May does not indicate that a response is required from the family, then it seems a little odd that his next point in the telephone conversation with SW, is that he is authorised to indicate to the HIA that the family will accept the conditions as set out in the HIA letter. He could not have had that authority if they did not understand the letter required a response.
- (f) By his own admission BD states that he felt the family had waited long enough and that HIA progress was slow and all he wished to do was to get the HIA Officers to bring it to a conclusion. He was representing the family who wanted “*to speed up the process*”. (email dated 18 May from BD to SW).

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

5.1 The issue here being: Could BD’s conduct amount to bullying of SW?

5.2 SW is a Senior Officer and used to dealing with Members’ questions about individual cases;

- 5.3 SW himself was of the view that BD's attitude would have made a junior member of staff feel "bullied" (p3, par.9);
- 5.4 SW states BD's tone was aggressive from the onset;
- 5.5 SW believes that BD wanted SBC to escalate the process on this case,
- 5.6 BD states that he found SW's attitude, "*very offensive, distressing and intimidating*" (Response letter p8 of 9); BD himself comments on SW's conduct as being offensive and is concerned about it when SW deals with "vulnerable members" of the community.
- 5.7 There may have been some communication difficulties during this telephone conversation so this may have created more misunderstanding/misinterpretation than usual between BD and SW.

5(B). Reasoning - "you must not bully any person"

- 5.8 Bullying can be a one off incident. Bullying can be offensive, intimidating, malicious, insulting or humiliating behaviour directed towards a weaker person. It can include undermining comments.
- 5.9 Undue pressure being the use of power over another to induce a compromise, to use more than what is reasonable, suitable or necessary to attempt to persuade someone by trying to use influence to further that cause.
- 5.10 I find that on the balance of the evidence BD did not bully SW but that he did place undue pressure upon him. The reasons are set out below:
- 5.11 It was a formal request for information. BD requested that information in his capacity as an elected Member.
- 5.12 SW states he was able to deal with the situation, however he does state that a junior member of staff may not have been able to do so. However, in view of the fact that SW felt offended by BD's comment and he put the receiver down I am inclined to conclude that the tone of the conversation had more of an impact on him than he may wish to admit.
- 5.13 It is possible to see how a comment by a elected Member about one Manager being "*nice*" could be seen as undermining to SW and others in the same team. The tone of BD's email to FM on 26 May has a negative undercurrent in that BD has "*never had any difficulty*" with MD, this can be interpreted as saying that there are difficulties with others. BD's use of language and expression may not be helpful in these circumstances.
- 5.14 BD's conduct is borderline between undue pressure and bullying towards SW. Whilst SW was able to deal with the situation at the time, it left him concerned enough to put in a formal complaint as he felt obliged to consider the impact of such behaviour by an elected Member on another less experienced member of staff.

- 5.15 DA's email of 24 June 2010 which deals with the investigation of BD's complaint about SW shows that BD had contacted the HIA about the same issues on "*numerous times and have spoken to a number of staff*" (par4). Further at paragraph 3 that all correspondence had been actioned within SBC's guidelines. At paragraph 2, DA states that earlier on 26 May MD had advised BD about the DFG process as well as the fact that the specifications would take a few weeks since the Surveyor was on annual leave. And that the Council has to prioritise resources and it does sometimes mean that vulnerable people may be waiting a long time for adaptation changes to their home. However late in the evening on 26 May BD continues to raise the issues again with the HIA office trying to push this case through again. It does not seem reasonable that having had the explanations from MD during the day BD then raises the issues again in the evening. From that email it is evident that BD had raised it with different Officers over a short period of time.
- 5.16 Whilst accepting that BD was anxious to ensure the progress of the Applicant's DFG, I conclude that BD did badger the HIA Officers about this case and that on that particular evening he tried to put undue pressure on SW to take a particular course of action. The evidence shows that his conduct did "overstep the mark" particularly with regard to the impression that SW formulated that he should escalate the HIA procedure on the case.

6. Conclusions and Recommendations

- 6.1 Overall I have formulated the impression that BD has tried to use his elected position to confer an advantage to a particular constituent. I do not get the impression that this was a simple Member enquiry about how a case was progressing but more a push to get the HIA to bring it to conclusion quickly in favour of the family. The case was clearly still within the normal time limit of six months. It would have come to a natural conclusion soon anyway.
- 6.2 By his own admission BD states that he felt the progress was slow and all he wished to do was to get the HIA Officers to bring it to a conclusion. BD did not understand the process for example he felt the Applicant had waited for some four or five years. This waiting time seems to be part of the normal process and Applicants are made aware of it. The evidence points to BD requiring action to be taken on it there and then. BD appears to be trying to force or drive SW to a conclusion.
- 6.3 I cannot draw any conclusion about whether BD telephoned SW or SW telephoned BD, as there is no independent evidence on this point. However, for the purpose of this investigation I have considered that BD may have made a mistake when he wrote his email to FM. SW is clear that he answered the telephone call that evening. There does not appear to be any evidence that SW had a reason or a message to telephone BD about this case. Indeed DA's email supports the view that SW would have no reason to telephone BD since his Manager MD had already spoken to BD during the day on 26 May about the case.
- 6.4 SW alleges BD raised his voice and he was asked to lower his tone. BD alleges that SW was "*shouting and screaming*" towards the end of the conversation. I am unable to draw any conclusions about who raised his voice or who was shouting since it was a conversation between two people on a telephone and there could be no witnesses

who could clarify the point. Both BD and SW felt compelled to complain about the telephone conversation. Overall I think the evidence points to the fact that it was probably a heated discussion between BD and SW.

6.5 On balance the evidence is that BD did “over step the mark”, was trying to drive the case to a conclusion without any regard for the processes involved and was therefore putting undue pressure on SW.

6.6 I also make the following observation:
BD has a valid point that the letter of 20 May 2010 does not make it clear that a response is required from the Applicant. The HIA may wish to consider ensuring that the letters requiring a response from Applicants clearly state that a response is required and provide a time limit within which it should be submitted. In my view best practice may be to send a duplicate letter which is required to be signed and returned to the HIA within a set time frame.

7 I would recommend that specific formal training for BD in the following is considered:

- a. What constitutes making relevant Member enquiries on behalf of constituents and how to progress them legitimately with Officers
- b. Interpersonal skills about interaction or expressing personal views to Officers,

8. I would like to record my thanks to all parties for the co-operation I have received in investigating these complaints.

9. In summary I conclude that:-

- a. BD has breached paragraph 3 of the Code in that he has failed to show respect for SW during the telephone conversation on 26 May 2010.
- b. BD has not breached paragraph 3(1)(b) of the Code, however he did put undue pressure on SW during the telephone conversation on 26 May 2010.

Date: 12th January 2011
Kuldip K Channa,
(Litigation Solicitor)
Standards Investigation Officer,
For and on behalf of the Monitoring Officer

LIST OF DOCUMENTS ANNEXED TO REPORT

- 1) Steve Wagner's Complaint dated 7 June 2010
- 2) Summary of Complaint dated 26 May 2010
- 3) Decision Notice SBC23 dated 26 May 2010
- 4) Interview Statement of Steve Wagner plus:
 - a) Email dated 18 May 2010 from BD to SW, referring to information about the grant,
 - b) Email dated 25 June from Manju Dhar, Private Sector Housing Manager (MD) to SW, (incorporating email response dated 24 June 2010 to BD from Denise Alder, Strategic Director of Green and Built, (DA) to BD; and an email from BD to Finbar McSweeney, Corporate Complaints Officer (FM) dated 26 May 2010)
 - c) SW's note of the telephone conversation on 26 May 2010
- 5) Letter dated 25 October 2010 from Councillor Dhillon to Steve Wagner
- 6) Letter dated 10 November 2010 from Investigator to Councillor Dhillon
- 7) Councillor Dhillon's written response to the allegation dated 15 November 2010 plus
 - i. Page 1 of 9 -Letter dated 15 November 2010. It consists of 4 paragraphs of BD's response to allegation,
 - ii. Page 2 of 9- Letter dated 20 May 2010 from SW to Applicant,
 - iii. Page 3 of 9 – continuing paragraphs 5 to 7 of BD's response to the allegation,
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 - v. Page 5 of 9 – further copy of letter dated 20 May 2010 from SW to the Applicant, plus paragraphs 8 to 10 of BD's response to the allegation,
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 - viii. Page 8 of 9 – BD's complaint to the Corporate Complaints Officer,
 - ix. Page 9 of 9 – paragraphs 22 to 24 of BD's response to the allegation.
- 8) Email dated 19 November 2010, sent on behalf of Steve Wagner to the Investigator