

HEARINGS SUB-COMMITTEE OF STANDARDS COMMITTEE

18 APRIL 2010

REPORT OF INVESTIGATION –CASE REFERENCE DU/MO/116

Report from: Deborah Upton, Monitoring Officer

Summary

This report brings before the Sub Committee the Investigating Officer's report into an allegation against a Councillor, which was referred for investigation by the Referrals Sub Committee of the Standards Committee on 20 January 2010.

1. Budget and Policy Framework

- 1.1 The procedures for dealing with allegations of misconduct by Councillors are set out in the Standards Committee (England) Regulations 2008 and the Council has established appropriate arrangements for the Standards Committee and its Sub Committees to deal with such matters.
- 1.2 The Investigation Report concludes that there was no failure to comply with the Members' Code of Conduct in respect of paragraph 3(2)(b), "you must not...bully any person" and a failure to comply with paragraph 3(1), "you must treat others with respect".
- 1.3 The "consideration" stage of the Hearing Sub-Committee: -
 - 1.3.1 agreed that Councillor Chitty was not in breach of paragraph 3(2)(b) of the Code of Conduct.
 - 1.3.2 accepted the finding that Councillor Chitty was in breach of paragraph 3(1) of the Code of Conduct and decided that the matter should be considered at a hearing under Regulation 18 of the Standards Committee (England) Regulations 2008.
 - 1.3.3 considered whether its decision should be recorded in the minutes after considering the "public interest test" and decided that the record of its meeting, including the decision, should be published.

2. Background

- 2.1 The Referrals Sub-Committee of the Standards Committee met on 20 January 2010 to consider a complaint that Councillor Chitty breached the Members' Code of Conduct by actions, which the complainant considered to be a failure to treat others with respect and bullying toward the complainant.
- 2.2 The Referrals Sub-Committee considered the complaint and decided there was a potential breach of the Code of Conduct. The paragraphs of the Code identified by the Referrals Sub-Committee as potentially having been breached were:
 - 2.2.1 Paragraph 3(1) "You must treat others with respect"; and
 - 2.2.2 Paragraph 3(2)(b) "You must not ... bully any person".
- 2.3 The matter was referred to the Monitoring Officer for investigation.
- 2.4 The Monitoring Officer appointed an independent investigator to undertake the investigation on her behalf. The investigation was originally started by a different investigating officer who was unable to complete the investigation due to a change of circumstances. The matter was accordingly assigned to another independent investigator to complete in November 2010.
- 2.4. A copy of the final investigation report is attached at Annex A. The purpose of the report is to establish the facts, apply this to the Members' Code of Conduct and relevant law and to make a finding of whether or not there has, in the Investigating Officer's opinion, been a breach of the Code.
- 2.5 In this case the finding of the Investigating Officer is that there has not been a breach of paragraph 3(2) b i.e. bullying.
- 2.6 The Investigating Officer concluded that there had been a failure to comply with the Code with regard to paragraph 3(1) i.e. treating others with respect.
- 2.4 The Hearings Sub-Committee should also note the response from the complainant, in response to the investigating officer's draft report, which is attached at Annex B. The complainant has been invited to the meeting to raise the points in her letter with the Sub-Committee.
- 2.5 The Hearings Sub-Committee should also note the response from Councillor Chitty, in response to the investigating officer's draft report, which is attached at Annex C.
- 2.6 The Hearing Sub-Committee should also note the pre-hearing process summary which is attached at Annex D.

3. Role of the Hearings Sub Committee

- 3.1 A “consideration” meeting of the Hearings Sub-Committee of the Standards Committee met and under Regulation 17 of the Standards Committee (England) Regulations 2008 the Sub-Committee was required to consider the report of the Monitoring Officer and make one of the following findings:
 - 3.1.1 That it accepts the monitoring officer's finding of no failure;
 - 3.1.2 That the matter should be considered at a hearing of the standards committee; or
 - 3.1.3 That the matter should be referred to the First-tier Tribunal for determination.
- 3.2 The Sub-Committee could only refer the matter to the First-tier Tribunal for determination where it determines that the action it could take against the Member would be insufficient were a finding of failure to comply with the Code be made at a hearing and the referral has been accepted by the First-tier Tribunal.
- 3.3 The “consideration” Hearings Sub-Committee considered the report of the Investigating Officer and accept the Investigator’s finding of no failure of bullying, but a failure to treat others with respect and decided that the matter should be considered at a hearing under Regulation 18 of the Standards Committee (England) Regulations 2008.
- 3.4 As part of the pre-hearing process, Councillor Chitty has been formally written to proposing the date of this meeting, outlining the hearing procedure, her rights and requested her to respond to the questions in the Standards for England guidance relating to attendance at the hearing and representation, findings of fact, evidence at the hearing, witnesses, the hearing being held in private and keeping documentation private.
- 3.5 Councillor Chitty did not return any answers to the questions but has confirmed that she will attend this meeting.
- 3.6 If the Hearings Sub-Committee were to make a finding of failure to comply with the Code in this case, it shall impose any one of, or a combination of, the following sanctions: -
 - 3.6.1 Censure of that member,
 - 3.6.2 Restriction for a period not exceeding six months of that member's access to the premises of the authority or that member's use of the resources of the authority, provided that those restrictions:
 - (i) are reasonable and proportionate to the nature of the breach; and

- (ii) do not unduly restrict the person's ability to perform the functions of a member;

3.6.3 Partial suspension of that member for a period not exceeding six months;

3.6.4 Suspension of that member for a period not exceeding six months;

3.6.5 That the member submits a written apology in a form specified by the Sub-Committee;

3.6.6 That the member undertakes such training as the Sub-Committee specifies;

3.6.7 That the member participate in such conciliation as the Sub-Committee specifies;

3.6.8 Partial suspension of the member for a period not exceeding six months or until such time as the member submits either:

- (i) a written apology in a form specified by the Sub-Committee ;or
- (ii) has undertaken such training or has participated in such conciliation as the standards committee specifies;

3.6.9 Suspension of the member for a period not exceeding six months or until such time as the member has either:

- (i) submitted a written apology in a form specified by the Sub-Committee; or
- (ii) has undertaken such training or has participated in such conciliation as the standards committee specifies.

3.7 Subject to paragraph 3.9, any sanction imposed under this regulation shall commence immediately following its imposition by the Sub-Committee.

3.8 Any sanction imposed under any of sub-paragraphs 3.6.2 and 3.6.9 or, where a combination of such sanctions is imposed, such one or more of them as the committee specifies, shall commence on such date, within a period of six months after the imposition of that sanction, as the committee specifies.

3.9 The Hearings Sub-Committee will be using the Standards for England model procedure for hearings, attached to Annex D.

4. Risk Management

Risk management is an integral part of good governance. The procedure set out in this report complies with the relevant legislation

and Standards for England (SfE) guidance to ensure that the process is conducted fairly and in line with best practice.

5. Financial and legal implications

- 5.1 The procedure for handling the outcome of investigations into complaints about member conduct are set out in the Standards Committee (England) Regulations 2008 and associated SfE guidance.
- 5.2 There are no financial implications arising from this report.

6. Decision required

- 6.1 The Hearings Sub-Committee is asked to consider the Investigation Report and decide whether Councillor Chitty failed to follow the Code of Conduct and whether a sanction should be applied.

Lead officer contact

Deborah Upton, Monitoring Officer Tel: 01634 332133

E-mail: deborah.upton@medway.gov.uk

Background papers

SfE guidance on local investigations and other actions
SfE guidance on Standards Committee Determinations
www.standardsforengland.gov.uk

FINAL REPORT

LOCAL INVESTIGATION DU/MO/116

Report of a local investigation under Section 82A of the Local Government Act 2000 into allegations concerning Councillor Chitty, a member of Medway Council.

W.D.Milne TD, LL.B, LARTPI
Solicitor

Investigating Officer
February 2011

CONTENTS

Introduction	3
Methodology	3
Summary of allegations and relevant part of the Code of Conduct	3
The Legal position	4
Evidence	4
Conclusion	5

Appendices

- (i) Laura Steward - Signed Statement
- (ii) Allison Sullivan - Signed Statement
- (iii) Councillor Chitty - Agreed Notes of Interview.

1. INTRODUCTION

- 1.1 This matter was first considered by the Referrals Sub-Committee of the Standards Committee of 20th January 2010, with the result that the decision was made that it was appropriate for the matter to be referred to the Monitoring Officer for local investigation. In due course I was accordingly appointed by the Monitoring Officer to carry out the investigation.
- 1.2 I am the former Head of Legal 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. At the start of the investigation the Monitoring Officer supplied me with a copy of the Decision Notice reference DU/MO/116 together with the background papers.

2. METHODOLOGY

- 2.1 This investigation was originally started by a different investigating officer who was unable to complete the investigation due to a change of circumstances. The matter was accordingly assigned to me to complete in November 2010.
- 2.2 In addition to considering the information specified above, an interview was carried out with Councillor Chitty at the Council's Gun Wharf offices on 29th November 2010. After the interview a note of that interview was prepared by myself as Investigating Officer and sent to the Councillor for consideration and comment. These agreed notes which are attached to this report, were used with all the written material to assist in completing this final report and reaching a conclusion. The agreed notes should be read in conjunction with the report and the witness statements appended hereto.

3. SUMMARY OF ALLEGATIONS AND RELEVANT PART OF THE CODE OF CONDUCT

- 3.1 The general summary of complaint in Decision Notice DU/MO/116 states that:

"It was alleged that Councillor Chitty on 09 December 2010 addressed an employee in an aggressive and angry way and gesticulated at an employee near the reception area of the Council Offices in Gun Wharf, Chatham".

- 3.2 It was felt by the complainant that Councillor Chitty's conduct may have breached the following parts of the Members Code of Conduct:

3.2.1 Paragraph 3(1) "You must treat others with respect" and

3.2.2 Paragraph 3(2) b "You must not bully any person"

4. THE LEGAL POSITION

4.1 The main issues in this case as set out in the code relate to treating others with respect which is a matter to be determined on the facts of each case and the question of bullying. With regard to bullying Standards for England provide a definition in their published information. They characterise bullying as:

4.1.1 *“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.*

4.1.2 *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, (but within the scope of the Code of Conduct). 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”.*

4.2 The guidance goes on to provide the 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”.*

5. EVIDENCE

5.1 The evidence in this case outside of the original complaint form consists of two signed statements prepared by my predecessor investigating officer, namely those of Laura Steward and Allison Sullivan and the agreed notes of the interview with Councillor Chitty prepared by myself. There is to my mind little consistency between the three versions of events save that all three agree that an incident took place at the steps near to the main reception desk.

5.2 Laura Steward and Councillor Chitty are agreed upon the date being 9th December 2009 whereas the witness to the incident Alison Sullivan only recalls that it took place in early December.

5.3 Outside of this there is disagreement as to the time of day and as to the direction in which Councillor Chitty was travelling. Laura Steward puts the time at around 5.30 pm as does the witness Allison Sullivan whereas Councillor Chitty for the reasons specified in the notes of interview, puts the time at somewhat earlier between 2 and 3 pm. As two witnesses, namely Laura Steward and Allison Sullivan, both seem clear that the incident took place at the end of the working day at

around 5.30 pm, it is submitted on the balance of probabilities that this version of events is probably correct.

- 5.4 Councillor Chitty recalls that when the incident took place she was walking down the steps in the reception in the direction of the main entrance and had reached the penultimate step when the exchange took place whereas Laura Steward recalls that Councillor Chitty was coming in the opposite direction and that indeed she herself was coming down the steps of the upper part of the main reception.
- 5.5 Allison Sullivan the witness notes that when she walked into the incident the older woman i.e. Councillor Chitty was addressing a younger woman who was at the bottom of the steps. It should also be noted that when Allison Sullivan first became aware of the incident she was coming through the swing doors near room13, which is some distance from the reception steps. This probably meant that she would have been unable to hear exactly what was being said until she had moved closer to the site of the incident. In this regard it should be noted that there are no other witnesses and that no one on reception recalls the incident at all.
- 5.6 Again there is no consistency between the three statements as to what exactly was said during the incident but it is clear that the verbal exchange only covered a short space of time probably something less than 30 seconds. Laura Steward admits that she cannot remember all that was said but seems to have a clear recollection of one sentence whereas Councillor Chitty's memory is of a somewhat different conversation. The words recalled by the witness Allison Sullivan are subtly different to those of the other two witnesses and to my mind could assist or detract from both other versions. It is clear however that the incident which did take place was seen as unpleasant by all parties, but for different reasons.
- 5.7 In summary it is therefore in my view clear that the evidence in this case, such as it is, is inconsistent. All parties agree that an incident took place, but without knowing exactly what was said it is difficult to judge the seriousness of the exchange, which is clear, only lasted for a short space of time.

6. CONCLUSION

- 6.1 Having examined this matter in some detail it is in my view difficult to determine whether a breach of the Code of Conduct took place or not and given the perceived length of the outburst and the lack of any evidence from the reception desk, it might be felt that the whole incident could be seen as de minimus.
- 6.2 The definition of bullying as shown at paragraph 4.1.1 above would not appear to cover this case unless of course the incident could be proven to be of a very serious nature. As can be seen the guidance makes it

clear that “minor isolated incidents are unlikely to be considered bullying” and again that “it is more difficult to judge bullying from general remarks”. I therefore conclude that in my view there is no evidence to suggest a breach of the Members Code of Conduct on bullying grounds.

- 6.3 With regard to paragraph 3(1) of the Code which specifies that you must treat others with respect, it is submitted that the matter should be looked at subjectively with regard to assessing whether a breach took place or not. As has been specified above, the evidence seems unclear, the duration of the incident was short and any mitigation on the part of Councillor Chitty should also be taken into account.
- 6.4 It is, however, clear that an altercation of some sort took place in public near reception. This was witnessed by one member of staff, namely Allison Sullivan, who noted that the complainant was distressed. The complainant herself in her statement records that she left the building “shaking and in tears”.
- 6.5 In the circumstances it would seem that on a balance of probabilities the evidence indicates that a breach of the Code of Conduct, on this ground, took place. Members should however bear in mind that given the scale of the incident they may wish to treat the same as de minimus.
- 6.6 In summary I therefore find that:
- 6.6.1 There has not been a failure to comply with the code with regard to paragraph. 3(2) b i.e. bullying, but that
 - 6.6.2 There has been a failure to comply with the Code with regard to paragraph 3(1) i.e. treating others with respect.

W.D.Milne
Solicitor

**Private and confidential
Statement of Laura Steward**

1. I am employed by Medway Council as a Political Assistant to the Labour Group.
2. On Wednesday the 9th December at around 5.30 p.m. I was just coming down the steps of the upper part of the main reception in Gun wharf, carrying some shopping bags as I had been out Christmas shopping that lunchtime and was being picked up to take me home.
3. I saw Councillor Chitty and I smiled at her in acknowledgement, as I would with any other councillor. At that point Councillor Chitty said to me in a loud voice words such as "Look here" pointing her finger at me. I turned back to face her and she started addressing me aggressively and angrily; gesticulating from the top of the stairs.
4. Councillor Chitty addressed me loudly and aggressively. I can not remember all that was said but it included "Listen, I don't want anything to do with you, or any of you. Don't you dare smile at me when you see me; do us both a favour and keep walking". Councillor Chitty then walked off in the direction of the café/members' services.
5. I was stunned by Councillor Chitty's unprovoked attack on me. I never even spoke to her. I was shaken and upset, crying. I can only think this happened because Councillor Chitty was reported by the Labour Group to have breached the code of conduct, in that she had broken the election laws, which I know is before the standards committee.
6. Another female employee of Medway Council witnessed the scene. The lady in question was coming down the few steps. After Councillor Chitty left for the café/members' services, I asked the lady whether she saw what happened. She had. I then asked her for her name. It was Alison Sullivan. Alison asked me who that was and I replied "Councillor Chitty" and she asked for my name, and I told her; I also told her that I worked as the Labour Group's assistant.
7. I really didn't take in anything else if Alison had said anything or asked me anything further but I do recall her saying to me "I don't want to be drawn into anything political, but I did think that was really off" in reference to Councillor Chitty's outburst.
8. I left the building shaking and in tears. I wrote down the name of the witness and what I could remember of Councillor Chitty's words to me.

9. The next day I lodged a formal complaint against Councillor Chitty's behaviour under the Code of Conduct.

Signed

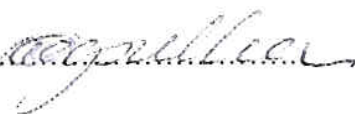
A handwritten signature in black ink, appearing to read "James Sewell". The signature is written in a cursive style with a large initial 'J'.

Dated 8th April 2010

Statement of Alison Sullivan

1. I am employed at Medway Council as Governor Support Officer in Children's Services.
2. In early December I witnessed an incident, which I distinctly remember. This concerned two people whom I saw in the reception area at Gun Wharf – in the raised part of reception. I knew neither of them – both females.
3. It was at around 5.30 pm just as I was going home. I was just coming through the double doors from the café area with the room 13 on my left. Straight ahead of me I could see an older woman stood at the top of the raised steps. She was leaning over with one hand holding a bag and the other arm was outstretched with finger pointing menacingly gesticulating at someone whom I could not see at that point. She was addressing someone in a loud voice.
4. As I got closer, I could see the older woman addressing a young lady in her 20s who was at the bottom of the steps. The older woman was standing at the top of the steps in the middle, as I could not get by. She had to move out of the way. The young lady appeared to be on her way out of the building as she had her coat on and was carrying some shopping bags. I observed the young lady was distressed.
5. The older woman was aggressive, addressing the young lady with a raised voice finger pointing. She addressed the young lady in words such as "stay away from me, don't look at me, and don't come near me" or words to that effect. It was most unpleasant – not nice at all.
6. The young lady appeared to be in shock and bewildered. She did not respond to the older woman. I thought she was very professional. The older woman was intimidating in her elevated stance gesticulating at the top of the steps. She appeared threatening. She then turned in the direction of the café and left.
7. As I got down the steps I asked the young girl whether she was all right. She responded, "No, did you see that?" I said, "Yes but are you ok?" The young girl wanted to know my name and the department I worked in. I gave her the information. I do not know the name of the young girl in question, and I doubt I would recognise her now, but she did mention that the older lady was Councillor Chitty.

Signed



Dated



LOCAL INVESTIGATION DU/MO/116

Interview with Councillor Chitty held at Medway Council Offices at Gun Wharf on 29th November 2010 between 1200-1310hrs.

1. At the start of the interview you indicated that you had seen a copy of Decision Notice DU/MO/116 where it is alleged that on 9th December 2010 you had “addressed an employee in an aggressive and angry way and gesticulated at an employee near the reception area of the council offices in Gun Wharf Chatham”. The employee was Laura Steward a Political Assistant to the Labour Group. The nub of the complaint was that you had allegedly said to her in a loud voice words such as “look here” pointing your finger at her. You then apparently addressed the employee aggressively and angrily saying “listen, I don’t want anything to do with you, or any of you. Don’t you dare smile at me when you see me; do us both a favour and keep walking”. This was the sum total of the incident which lasted a very short space time.
2. Having noted the summary of the incident you went on to give me your version of events. You explained that at the time of the incident you were beginning to feel that you were being deliberately targeted by the Labour Group after several unpleasant episodes and that the attacks were entirely party political. You had just survived an investigation by the police, which had subsequently become the subject of a Standards Committee investigation and had endured several difficult incidents relating to protests about the education cuts.
3. At the time of the schools reorganisation and closures programme you recall attending a Special Council meeting in the St Georges Centre. Your party was obviously involved in the closure programme, but it was not a matter, which was specific to your portfolio, Councillor Wicks being the portfolio holder for Education. As you left the building at the end of the meeting you were approached by a little lady who started to ask you what she should tell her children about the education cuts. This lady was quickly joined by two labour supporters, namely a female labour candidate and labour Councillor Esterson who you noted is a very tall person. The two labour politicians spoke to you very loudly gesticulating in an aggressive manner. The height of Mr Esterson is important as he towered over you and made you feel most uncomfortable.
4. A similar incident occurred when you were leaving St Georges centre after the next meeting relating to the education cuts. On this occasion you were again approached by the same little lady, together with Councillor Shaw another labour councillor and Councillor Esterson. On this occasion you were again shouted at loudly with much gesticulation and you recall that Councillor Esterson adopted a difficult manner. You felt very intimidated and indeed quite frightened and you recall the little

lady calling you a “scummy bitch” at the top of her voice. Again the incident was most unpleasant.

5. On the day of the current incident, namely 9th December 2009, your husband drove you to the council offices and you encountered councillor Esterson as you were walking to the building. He said something to you in an aggressive tone and in a very off hand manner. You were unable to make out exactly what he was saying but you replied that you wanted nothing to do with him and that you were tired of harassment. You said “I do not want to get involved, leave me alone”. This incident was witnessed by your husband.
6. Later in the same day between 2 and 3 p.m. the incident involving Laura Steward took place. You were walking down the short flight of stairs in the reception area at Gun Wharf and had reached the penultimate step, when Laura who appeared to be coming from the direction of the entrance walked abruptly across in front of you .You were stopped in your tracks and were quite surprised at what had happened and said to her “if you see me just ignore me, just walk straight past”. That was all you said which took about 10 seconds. You were taken completely by surprise but do not feel you were aggressive in any way, given the circumstances of the case.
7. At the time of the incident you had known Laura for some time and had been on reasonably friendly terms with her when the council occupied its former office building. In fact in those days you recall speaking to her on a number of occasions during cigarette breaks, as you were both smokers.
8. After the move to the new building in Gun Wharf you noticed a marked difference in Laura’s attitude to you. She ceased to acknowledge you and never spoke when she saw you. You also noticed that her attitude had changed in other ways. On one occasion she attended a meeting at which you were present and took notes on behalf of the labour group. You later heard that she had made comments to the effect that “Councillor Chitty was just waffling on as usual”. This in your view indicated that her attitude to you had changed.
9. It is important to note that the time at which the alleged incident took place is different in your recollection to that of Laura Steward. She is of the opinion that the incident took place at around 5.30 pm, but you do not feel that this could be correct as at the time you were engaged in preparation for a pre agenda meeting for the Industrial Relations Committee and with attendance at that pre agenda meeting i.e. you were fully engaged in those activities between 4.30 and 6.30pm. You do not deny an incident took place as you have described above, but feel the likely timing was between 2 and 3pm.
10. You also wish to make it clear that as specified in paragraph 6 above, you were walking down the steps in reception in the direction of the

main entrance when the incident took place and not moving in the opposite direction as indicated by Laura Steward. It is also clear that no incident was witnessed or recorded by staff on the reception desk, which is close to the steps in question.

These are your recollections with regard to the incident.

W.D. Milne
Solicitor

10th December 2010
Amended 18th January 2011

Response to report DU/MO/116

I have set out my response to the draft report, using the same numbering system for clarity. I have addressed this on a point by point basis.

- Paras 1.1, 2.1 and 2.2. There appears to be no explanation as to why, following the decision of the referral sub-committee in January, Cllr Chitty was not interviewed until the end of November, and only after the appointment of a new investigator. This is especially pertinent given that the complainant and the witness were interviewed in April, and by the original investigator. There are three issues: firstly, the unnecessary delay, which has left me without resolution for 15 months; secondly, the current investigator therefore did not speak with the witness and complainant, and only relied on paper statements, whereas he did interview the councillor in question, and then wrote his report. This appears to be a different, and unfair level of treatment, and at the very least the witness and complainant should have been afforded a re-interview with the person who subsequently wrote the report, especially given the amount of time that had elapsed. Thirdly, if the investigator were only given the case in November, I can only conclude that the previous investigator held the case until that point, and was either unable or unwilling to interview Cllr Chitty. In either circumstance, it requires an explanation, especially if Cllr Chitty were not making herself available for interview. In that situation, the report should have been drawn up and the case proceeded without her input.
- Para 5.1. I dispute the content of this paragraph, specifically the line that “there is to my mind little consistency between the three versions of events.” There is a great deal of consistency between the evidence of the complainant and the witness. Namely: they agree on the precise time- 5.30pm; that the ‘older woman’/Cllr Chitty was standing at the top of the steps; that she was pointing , “gesticulating’, and being “aggressive”/”angry”/”unpleasant”; that the ‘younger woman’ was standing at the base of the stairs; that Cllr Chitty was loudly/with a raised voice, addressing me; that Cllr Chitty was saying something along the lines of ‘don’t come near me, don’t look at me, don’t you dare smile at me’; and that I was very distressed by the incident. Cllr Chitty’s recollection of events however, bears little relation to what is outlined in the two other statements.
- Para 5.2. The investigator appears to draw a negative conclusion from the fact that the witness can only remember (correctly) that the incident happened in early December. It is worth noting that the witness was interviewed four months after the event, and so an accurate recollection of the period as to when the event took place as opposed to the precise day, is to my mind not surprising.

- Para 5.5 (the first one, as there are two). The investigator notes that both the witness and the complainant place Cllr Chitty in the same place, whereas Cllr Chitty again has a different view, but draws no conclusion from this. He notes that when the witness first appeared, she was “some distance” from reception. However, the distance from exiting the café to the top of the stairs, where the incident took place, is not a great distance; plus, the witness was continually travelling towards the incident. As the witness did not, at any point, state that she couldn’t hear what was being said (in fact she notes how loud Cllr Chitty was), the investigator should not draw this conclusion without any evidence. The investigator also appears to draw a negative conclusion from the fact that there were no other witnesses. He also states that no one on reception recalls the incident; however, any view of the incident was entirely blocked by the Council’s very large Christmas tree, and he has not established that there was anyone on the reception desk and available at that precise time to overhear the incident in the first place. The investigator may have been more attuned to these issues if he had interviewed the complainant.
- Para 5.5 (the second). Again, I disagree entirely with the statement “there is no consistency between the three statements as to what was said”- please see comments under the second bullet point. Whereas the witness and complainant remember a very similar version of events, in the same aggressive, threatening manner, Cllr Chitty’s version is very different.
- Para 5.6. I therefore again disagree with the statement that “the evidence is inconsistent”. It is strikingly apparent that two of the accounts are very similar. And, as they are so similar and one is very different, it would appear to me that on the balance of probabilities, the investigator should have concluded that they represented an accurate account of the incident.
- Para 6.1. The investigator somehow concludes that despite there being a witness who saw the entire event as she walked past it and therefore gives a similar account to the complainant, is not relevant to this section of the conclusion, but that the absence of anyone witnessing the incident from the reception desk, is. I fail to see how the absence of a witness from the desk- when any view was completely obscured - can be accorded more value than the evidence of a person who did witness the event. I also feel it is also both inaccurate and unprofessional to refer to the incident as ‘de minimus’: see below.
- Para 6.3. I, for the reasons outlined above, disagree with the fact that the evidence is unclear. I also disagree, in the strongest possible terms, with the comment about ‘mitigation’ on Cllr Chitty’s part, for the following reasons:

- Even if all the events outlined in her evidence took place, this would not in any way be mitigating factors in verbally abusing a member of staff. If she is claiming that people had acted unpleasantly to her, then it does not follow that she would or should do this to someone else.
 - If the report wishes to take account of said mitigation, it is entirely unfair and prejudicial that Cllr Esterson and Cllr Shaw have not been contacted to ask whether any of the events took place.
 - The mitigating factors appear to relate to incidents with the Labour Group, not me, over a period of weeks if not months, and therefore I cannot see how they are relevant to this incident
 - Cllr Chitty's relations with Labour Group councillors are a matter for them, and should not cause her to, nor be a mitigating factor in, verbally abusing a member of staff who works for the Labour Group.
 - It seems perverse that so much of the evidence given by Cllr Chitty in fact relates not to the evidence, but to her relations with Labour councillors. The statements given by the witness and the complainant deal with the incident alone. Either the information from Cllr Chitty should not be included, or I as the complainant should be given the same chance to submit my own mitigating factors; see below.
 - This is particularly relevant given how Cllr Chitty represents me and my actions, which for the record I find offensive. As my interview was conducted nearly a year ago, I cannot remember to what extent I raised the fact that Cllr Chitty had, for a significant period of time, blanked me rather than acknowledge me, and had on many occasions behaved rudely towards me and not that other way round. This had recently worsened given that the Labour Group had reported her for electoral fraud. Despite this, I acknowledged her with a smile as I believed it was a professional approach for an officer of the Council in their dealings with an elected member of any party.
- Para 6.5. The investigator again chooses to refer to suggest that the incident is 'de minimus'. Given that, in accordance with the Standards for England Guidance, a report should only contain:
 - a 'confidential' marking
 - a 'draft' or 'final' marking
 - the date
 - the legislation under which the investigation is being carried out
 - a summary of the complaint
 - the relevant sections of the Code

- evidence
- your findings of fact
- your reasoning
- your finding as to whether there has been a failure to comply with the Code

then these comments are inappropriate, and should be removed. The investigator should only include evidence and the facts of the case, and not their opinion, as that subverts the role of the Standards committee.

I hope that these issues are dealt with in the final report, and that as confirmed in the e-mail to me of Deborah Upton, that this response is also given to the members of the committee.

Laura Steward, 3rd March 2011

Please contact:
Your ref:
Our ref: RC/RDM
Date: 07 March 2011

Mrs D Upton
Monitoring Officer
Medway Council
Gun Wharf

Councillor Jane Chitty
Portfolio Holder for Strategic Development
& Economic Growth
Medway Council
Gun Wharf
Chatham
Kent
ME4 4TR
e-mail: jane.chitty@medway.gov.uk

Dear Ms Upton

I have read and understood the draft report and I would just like to re-iterate the discrepancy over the actual timing that the alleged incident took place. I believe it should be taken fully into account that between 4.43 and 6.30pm I was in the company of officers continuously, in preparation for the International Relations Committee and they would have been fully aware of any incident that took place at this time.

Other than that, I am prepared to accept the findings of the report so that this matter can be closed.

Yours sincerely



COUNCILLOR JANE CHITTY
Portfolio Holder for Strategic Development
& Economic Growth



PRE-HEARING PROCESS SUMMARY

Name of Authority: Medway Council

Name of the subject member: Councillor Jane Chitty

Name of the complainant: Laura Steward

Case reference number: DU/MO/116

The name of the Standards Committee member who will chair the hearing: Janet Gray

Name of the Monitoring Officer: Deborah Upton

Name of the Independent Investigating Officer: Duncan Milne

Name of the clerk of the hearing: Teri Reynolds

Date the pre-hearing process summary produced: 4 April 2011

Date of hearing: 18 April 2011

Time of hearing: 7pm

Place of hearing: Meeting Room 9, Gun Wharf, Dock Road, Chatham, ME4 4TR

Summary of the complaint:

It was alleged that Councillor Chitty, on 9 December 2009, addressed an employee in an aggressive and angry way and gesticulated at an employee near the reception area of the Council Offices in Gun Wharf, Chatham.

The relevant sections of the Code of Conduct:

Paragraph 3(1) – “You must treat others with respect”;
Paragraph 3(2)(b) – “You must not...bully any person”.

The findings of fact in the investigation report that are agreed:

The subject member has indicated to the Monitoring Officer that she accepts the findings of the report.

The findings of fact in the investigation report that are not agreed:

The subject member disagrees with the time that the alleged incident took place, as stated in paragraph 5.3 of the report.

Whether the subject member will attend: Yes

Whether the Monitoring Officer will attend: Yes

Whether the Investigating Officer will attend: Yes

The names of any witnesses who will be asked to give evidence:

The subject member and the Independent Investigating Officer have not asked for any witnesses to be called.

An outline of the proposed procedure: set out at appendix one.

**MEDWAY COUNCIL: STANDARDS COMMITTEE
HEARING PROCEDURES**

Interpretation

1. 'Member' means the member of the authority or an ex-member of the authority who is the subject of the allegation being considered by the Standards Committee, unless stated otherwise. It also includes the member's nominated representative.
2. 'Investigator' means the Monitoring Officer or other investigating officer and his or her nominated representative.
3. 'Committee' also refers to 'a standards sub-committee'.
4. 'Legal advisor' means the officer responsible for providing legal advice to the Standards Committee. This may be the Monitoring Officer, another legally qualified officer of the authority, or someone appointed for this purpose from outside the authority.

Representation

5. The member may be represented or accompanied during the meeting by a solicitor, counsel or, with the permission of the committee, another person.

Legal advice

6. The committee may take legal advice from its legal advisor at any time during the hearing or while they are considering the outcome. The substance of any legal advice given to the committee will be shared with the member and the investigator if they are present.

Setting the scene

7. After all the members and everyone involved have been formally introduced, the Chair will explain how the committee is going to run the hearing.

Preliminary procedural issues

8. The committee will then resolve any issues or disagreements about how the hearing will continue, which have not been resolved during the pre-hearing process.

Making findings of fact

9. After dealing with any preliminary issues, the committee will then move on to consider whether or not there are any significant disagreements about the facts contained in the investigator's report.

10. If there is no disagreement about the facts, the committee will move on to the next stage of the hearing.
11. If there is a disagreement, the investigator, if present, should be invited to make any necessary representations to support the relevant findings of fact in the report. With the committee's permission, the investigator may call any necessary supporting witnesses to give evidence. The committee may give the member an opportunity to challenge any evidence put forward by any witness called by the investigator.
12. The member will then have the opportunity to make representations to support his or her version of the facts and, with the committee's permission, to call any necessary witnesses to give evidence.
13. At any time, the committee may question any of the people involved or any of the witnesses, and may allow the investigator to challenge any evidence put forward by witnesses called by the member.
14. If the member disagrees with most of the facts, it may make sense for the investigator to start by making representations on all the relevant facts, instead of discussing each fact individually.
15. If the member disagrees with any relevant fact in the investigator's report, without having given prior notice of the disagreement, he or she must give good reasons for not mentioning it before the hearing. If the investigator is not present, the committee will consider whether or not it would be in the public interest to continue in his or her absence. After considering the member's explanation for not raising the issue at an earlier stage, the committee may then:
 - (a) continue with the hearing, relying on the information in the investigator's report
 - (b) allow the member to make representations about the issue, and invite the investigator to respond and call any witnesses, as necessary, or
 - (c) postpone the hearing to arrange for appropriate witnesses to be present, or for the investigator to be present if he or she is not already.
16. The committee will usually move to another room to consider the representations and evidence in private.
17. On their return, the Chair will announce the committee's findings of fact.

Did the member fail to follow the Code?

18. The committee then needs to consider whether or not, based on the facts it has found, the member has failed to follow the Code of Conduct.

19. The member will be invited to give relevant reasons why the committee should not decide that he or she has failed to follow the Code.
20. The committee will then consider any verbal or written representations from the investigator.
21. The committee may, at any time, question anyone involved on any point they raise in their representations.
22. The member will be invited to make any final relevant points.
23. The committee will then move to another room to consider the representations.
24. On their return, the Chair will announce the committee's decision as to whether or not the member has failed to follow the Code of Conduct.

If the member has not failed to follow the Code of Conduct

25. If the committee decides that the member has not failed to follow the Code of Conduct, the committee will move on to consider whether it should make any recommendations to the authority.

If the member has failed to follow the Code

26. If the committee decides that the member has failed to follow the Code of Conduct, it will consider any verbal or written representations from the investigator and the member as to:
 - (a) whether or not the committee should set a penalty; and
 - (b) what form any penalty should take.
27. The committee may question the investigator and member, and take legal advice, to make sure they have the information they need in order to make an informed decision.
28. The committee will then move to another room to consider whether or not to impose a penalty on the member and, if so, what the penalty should be.
29. On their return, the Chair will announce the committee's decision.

Recommendations to the authority

30. After considering any verbal or written representations from the investigator, the committee will consider whether or not it should make any recommendations to the authority, with a view to promoting high standards of conduct among members.

The written decision

31. The committee will announce its decision on the day and provide a short written decision on that day. It will also issue a full written decision shortly after the end of the hearing.