Decision Notice of The Monitoring Officer

Complaint No: ABC/20/012

Against: Ms Jane M A Martin

The Complaint

1. In July 2021, my Deputy Monitoring Officer, Mr Jonathan Goolden, considered and referred for investigation a complaint concerning the alleged conduct of former Councillor Jane M A Martin (**Ms Martin**). Ms Martin was, at that time, a Member of Kennington Community Council (**the Council**).

2. The details of the Complaint are set out in the Final Report of the Investigating Officer, Verina Wenham, Solicitor (non–practising) (**the Investigating Officer**) dated 21 July 2023. A copy of the Investigating Officers Final Report (with its appendices removed and other personal data redacted or anonymized as appropriate) is attached as **ANNEX 1.**

3. As summarised by the Investigating Officer, there was some considerable delay in preparing and finalising the draft report, which was largely due to delays on Ms. Martin's part including some unavoidable delay due to personal circumstances.

4. During the course of the investigation, Ms Martin resigned from the Council in March 2023. I decided that it was appropriate to complete the investigation since it was already at an advanced stage.

The Investigating Officer's Conclusions

5. In order to ensure that relevant parties are treated fairly in an investigation and its outcomes, it is common to afford to parties whose conduct may be criticised an opportunity to comment on any draft findings before they are settled. To this end, before finalising her Report, the Investigating Officer sent copies of her draft report to Ms Martin and the complainant for their comments.

6. Ms Martin did not provide any comments.

7. The Investigating Officer's Final Report concluded that, in her view, in relation to an email sent by Ms Martin on 9 December 2020, there had been:-

    - **no breach** of paragraph 1 of the Council's Code of Conduct (behaving in a manner that a reasonable person would regard as disrespectful)

- **no breach** of paragraph 2 of the Council's Code of Conduct (acting in a way which a reasonable person would regard as bullying or intimidatory)

8. The Investigating Officer's Final Report concluded that, in her view, in relation to Ms Martin's conduct during a telephone conversation on 9 December 2020, there had been:-

    - **a breach** of paragraph 1 of the Council's Code of Conduct (behaving in a manner that a reasonable person would regard as disrespectful)

    - **a breach** of paragraph 2 of the Council's Code of Conduct (acting in a way which a reasonable person would regard as bullying or intimidatory)

Consideration of the Investigating Officer's Final Report

9. Having received the Investigating Officer's Final Report I considered it appropriate for the benefit of all parties and to bring closure to the matter to seek an apology from Ms Martin in relation to the breaches identified at paragraph 8 above.

Subsequent Events

10. Ms Martin was contacted for comments and was asked whether she would be willing to resolve the complaint informally by way of apology.

11. Ms Martin responded almost immediately to request that she is not contacted further about this matter. Ms Martin refused to engage further in discussion in any form when contacted. As such, no informal resolution could be reached.

12. The Final Report has also been sent to the Complainant in this matter and to Kennington Community Council.

13. Ms Martin ceased to be a Kennington Community Councillor in March 2023. She therefore ceased from that time to be subject to the code of conduct and to any sanctions that might be imposed thereunder.

Decision

14. In light of all of the above, and considering that there can be no formal action under the Arrangements, I have decided:-

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

Notification of Decision

15. This Decision Notice is sent to:-

    - The Complainant

- Ms Jane Martin
- Kennington Community Council

What Happens Next

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

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

18. Therefore, I will report this Decision and its Annex for information to the next public meeting of the Standards Committee, which is scheduled to be held on 30 July 2024.

19. The Decision Notice and its Annex will be placed on the Borough Council's website page entitled "Monitoring Officer Final Decision Notices Following A Finding Of A Breach Of The Code Of Conduct By An Investigator"

Appeal

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

Additional Help

21. If you need help or support in relation to this Decision Notice or future contact with the Council, please let me know. If you have difficulty reading this Decision Notice, we can assist you, in accordance with our duties under the Equality Act 2010. We can also help if English is not your first language. Please contact our Customer Services: email: customer.care@ashford.gov.uk, telephone: (01233) 331111, or call in to the Civic Centre, Ashford.

Signed: 

Date: 22 July 2024

T.W. Mortimer, LL.B., Solicitor to the Council & Monitoring Officer
Ashford Borough Council
Civic Centre
Tannery Lane
Ashford Kent TN23 1PL

ANNEX 1 to the Decision Notice of the Monitoring Officer

Complaint No: ABC/20/012

Investigation Report

Prepared by Verina Wenham for the Monitoring Officer, Ashford Borough Council

21 July 2023

Kennington Community Council - Complaint of breach of the Code of Conduct by Councillor Jane Martin– reference number ABC/20/12

Executive summary

The commission

1. The Investigating Officer is Verina Wenham. I am a Solicitor (currently non practising) and I have nearly fourteen years' experience as a Monitoring Officer with a district council and over twenty years local government experience.

2. I was appointed by the Deputy Monitoring Officer of Ashford Borough Council on 1 February 2022 to investigate the above complaint following his decision to refer the complaint for investigation as detailed in section 7.1 of his Decision Notice dated 30 July 2021. ("Decision Notice"). A copy of the Decision Notice is attached as Appendix A to this report.

Scope of the investigation

3. The Complaint, referenced as 1B, submitted by the Complainant on 1 March 2021, alleges that Councillor Martin intimidated Person A by her aggressive insistence that Person A should breach standing orders. It is alleged by the Complainant that intimidatory behaviour took place via an email of 9 December 2020 to Person A, and via a subsequent telephone conversation between Councillor Martin and Person A. The full details of the complaint are set out in paragraph 12 of this report.

4. In his assessment of Complaint 1B, the Deputy Monitoring Officer recorded in the Decision Notice, that …" in the absence of a response to the complaint by Councillor Martin to the allegation made against her, it is not possible to evaluate the evidence provided by the Complainant and, therefore, to be able to assess the veracity of the complaint. Thus, there is no alternative but to determine that this matter be referred for investigation" …

5. As part of my investigation, I have interviewed the Complainant and Person A [redacted] Kennington Community Council ("KCC"). They have commented on my notes of their respective interviews, and we have exchanged further information and communications. I would like to put on record my thanks to them for their cooperation.

6. For the reasons set out later in this report I have been unable to interview the Subject Member, Councillor Martin, or obtain any written information in respect of this investigation from her.

Factual Context

7. From information publicly available, I have been able to establish that Councillor Jane Martin has been a councillor for KCC since July 2019 to date. I also understand that Councillor Martin has served as a Borough councillor, and has previously been a Cabinet Member, at Ashford Borough Council ("ABC")

8. Councillor Martin was at the time of this complaint, the Chairman of the Communications Committee at KCC. In addition, she was also a parish councillor at Chilham Parish Council.

9. The Complainant [redacted].

10. On 9 December 2020, KCC held a Council meeting. The agenda for that meeting included at "248/20 Communications" three items; 1, 2) a, b (i) (ii), c (i), (ii) and (iii) and 3. Item 1 referred to an update from the Communication Committee whilst items 2 and 3 related to KCC's website project.

11. On 9 December 2020 Councillor Martin emailed Person A, asking for an explanation as to why items 2 and 3 referred to above had been placed on the agenda. The email was copied to all members of the Council.

The Complaint

12. The complaint submitted by the Complainant, which is subject to this investigation is set out in full below:

> *"On 9 December 2020, Cllr Martin wrote to Person A, copied to all councillors, concerning two motions on the agenda of the December Council and told her:*
>
> *"Could you explain the Communications Committee Item 248/20 to me as Chair of the Committee and Vice-Chair of the Council please?*
>
> *I expressly asked for one main item and the minutes of our meetings as the only two items to be tabled.* [redacted]

[redacted]

On behalf of the Communications Committee I request and insist that these items are removed, and that, in future, only agreed and discussed items are tabled."

The items in question were two motions which had been provided [redacted] by the Complainant and were therefore in order.

By insisting in this way and trying to instruct Person A, Cllr Martin was in breach of SO 25 a ii. She was also making a request which would have put Person A in breach of SO 9. While the email was superficially polite, Cllr Martin also telephoned Person A and told her repeatedly over some 40 minutes that:

> *It was unacceptable for [redacted] accept any motion onto the Council agenda from an individual councillor unless this had gone through the relevant committee*
>
> [redacted] *had a duty to inform a Committee Chair of any motion put forward by a councillor that was relevant to its work*
>
> [redacted] *had the authority to remove any motion from the agenda at any time*
>
> [redacted] *has the same authority, at least in another parish where she is Chair*
>
> *The Complainant's assertion that SO 9 and SO25 a ii applied was bullying*
>
> [redacted] *was bullying the Committee by accepting such motions; and*
>
> *If the items were not removed, there would be a scene and it would explode in Council.*

During this phone call Cllr Martin she felt the need to protest that her actions were not bullying, even though Person A at no point accused her of this.

The original criticism was unwarranted and unlawful but had been widely copied. No apology for the error was offered by Cllr Martin, either bilaterally or to wider recipients."

13. As set out earlier in my report the Decision Notice helpfully sets out the remit of the investigation.

The Code of Conduct

14. KCC has a duty to promote and maintain high standards of member conduct and has accordingly adopted a Code of Conduct ("the Code") in accordance with the requirements of Section 27(2) of the Localism Act 2011. The current Code was adopted on 9 May 2019 and can be found on the Council's website.

15. It is necessary to establish which parts of the Code may apply to the complaint. The Code contains five, what I will refer to as operative paragraphs, with two appendices.

16. In their complaint form, dated 1 March 2021, the Complainant specified that there had been a potential breach of paragraphs 1 and 2 of the Code, which are set out below:

> Member Obligations
>
> When a member of the Council acts, claims to act or gives the impression of acting as a representative of the Council, he/she has the following obligations.
>
> - He/she shall behave in such a way that a reasonable person would regard as respectful.
> - He/she shall not act in anyway which a reasonable person would regard as bullying or intimidatory.

17. The complaint form also refers to a potential breach of paragraph 4 of the Code relating to the use of resources. Complaint 1B was one of a number of complaints submitted by the Complainant, however, it is the only complaint that has been referred for investigation, and paragraph 4 of the Code is not relevant to this investigation.

18. The Code of Conduct is only engaged by a member when he/she is acting in their capacity as an elected member and not in their private capacity. The Local Government Association (LGA) has issued guidance on what acting in your official capacity means and there have been a number of tribunal and court cases that have considered what "official capacity" means.

19. The case of *MC v Standards Committee of LBC Richmond [2011] UKUT 232 (ACC)* which considered the analysis of "official capacity" in the case *of (Livingstone v The Adjudication Panel for England [2006] EWHC 2533 (Admin)* and considered the case of *R (Mullaney)v Adjudication Panel for England and others [2009] EWHC 72 (Admin))* discussed by the Upper Tribunal, whilst pre-dating the Localism Act 2011,

remains relevant in setting out the principles for determining if a member is acting in his or her official capacity. The principles are:

- The conduct of the Member must be linked to their membership of the authority.
- Unlawful conduct is not necessarily within the Code.
- Parliament could have provided differently to deal with some circumstances.
- A fact sensitive analysis is always required.
- Code definitions require the application of ordinary English descriptive words in order to make informed judgements by reference to the facts.
- Two decision makers could apply the law correctly yet reach different conclusions without being irrational.

20. In this case, I do not consider that there is any dispute that Councillor Martin was acting in her official capacity when contacting Person A regarding the agenda for the Council meeting of 9 December 2020.

21. I conclude that at the time of the complaint that Councillor Martin was acting in her official capacity and as such the Code of Conduct was engaged.

Evidence

22. **Evidence of the Complainant** – The Complainant was interviewed as part of this investigation and a copy of the approved summary of the interview is attached as Appendix B. The further evidence submitted by the Complainant set out in paragraph 38 below is attached as Appendices C -E respectively.

23. At interview the Complainant confirmed that [redacted] involvement with a newly created community council gave them an opportunity to give something back to their community.

24. The Complainant said [redacted]

25. He said that a Clerk was appointed in July 2019; however, she left post after little more than a month. The Complainant said that one reason given by the Clerk for leaving was that she did not appreciate the tone of emails sent by some of the councillors to the then chair.

26. [redacted]

27. The Complainant said that [redacted]

28. At the annual council meeting in 2021 Councillor Y was elected as Chairman, however he subsequently resigned in July 2021. The Complainant [redacted]

29. The Complainant referred to the procurement of the website for KCC. He said that the Communications Committee had been given the responsibility to conduct the procurement of the website on behalf of KCC. The Complainant said that a former KCC councillor had put in a Freedom of Information (FOI) request for information around the procurement exercise, and the quotations received. He said that the former councillor who submitted the FOI request was told that it would be too expensive to respond to the FOI request. [redacted] he said that he "pressed" Councillor Martin, who was the chairman of the Communications Committee for the quotations for the websites, and he said that Councillor Martin confirmed that there were no emails. The Complainant said that this was in contradiction to the response previously given that it would be too expensive to comply with the request. [redacted]

30. In response to the Investigating Officer's reference to the email of 9 December 2020 that formed part of their complaint against Councillor Martin, The Complainant said that he attended the last meeting of the Communications Committee, prior to Council on 23 November 2020. [redacted] He said that he wanted improvements on the website and that he raised some issues at the meeting.

31. The Complainant said that he was "frustrated" as some of the issues he was raising had been outstanding for some time and that he wanted to "push" things along. He said that this was the reason that he put items on the agenda for Council on 9 December 2020. The Complainant said that the items 2, a,b, and c and 3 were added on to the agenda in accordance with KCC's Standing Orders and he referred to their emails of 20 November 2020 (13.07) and 9 December 2020 (12.53) which he had previously forwarded to the Investigating Officer.

32. In response to the question, which aspects of the email of 9 December 2020 were "intimidating" towards Person A, the Complainant said that he felt the main intimidation was in the phone call between Councillor Martin and Person A subsequent to the email. He said that he did not think anything in the email was bullying, but that it was a strong request to Person A, which would have

put them in breach of KCC's Standing Orders. The Complainant said that he would expect Person A to be able to say this to Councillor Martin.

33. The Complainant then said that their main concern was the subsequent telephone call from Councillor Martin to Person A. The details of the conversation were set out in their complaint. He said that the telephone conversation was long and that it could be classed as harassment. The Complainant said that Person A was told that two other councillors were "misadvising" them. The Complainant said that this telephone call came "on the back" of a year of phone calls from Councillor Martin and some other councillors on the Communications Committee, he said some would be in the evening [redacted]

34. The Complainant said that the content of the conversation was relayed to them by Person A, and that their recollection was that Person A spoke to them about the telephone conversation on the day of the Council meeting (9 December 2020).

35. The Complainant further said that [redacted].

36. The Complainant said that Person A would be "attacked" via email and that these would be copied to everyone. [redacted] If any criticism is unfair, then the Complainant would ensure that they supported them. The Complainant said that the telephone conversation was "the straw that broke the camel's back" and this led to them submitting the complaint. They said that they reacted to the information given to them by Person A.

37. The Complainant said that there is currently a "business like" atmosphere at KCC, although there are a number of councillor vacancies at the moment.

38. Prior to their interview, the Complainant provided the following emails as part of the investigation:

    Email dated 20 November 2020, to Person A asking for certain items to be put on the 9 December 2020 Council meeting agenda (including 248/20 2 and 3) plus attachments. (Appendix C)

    Email dated 9 December 2020 to Councillor Martin, cc to Person A and all members regarding Standing Orders and that they had asked for the items to be placed on the agenda (Appendix D)

    Email dated 9 December 2020 from Councillor Martin to the Complainant in response to their email. (Appendix E)

39. **Evidence of the Subject Member** – The Subject Member has not engaged with the investigation, and as such has not been interviewed or provided any written evidence or information.

Other Evidence

– Person A

40. I also contacted the Person A, who was the subject of the alleged behaviour from Councillor Martin, detailed in the complaint. Person A agreed to be interviewed as part of the investigation and for their evidence to be used in the production of this report. In addition to their interviews, Person A has also provided copies of emails and responded to additional questions.

41. [redacted].

42. Person A said that they felt supported [redacted] Person A said they felt supported by some members. [redacted]

43 The IO referred Person A to the email of the 9 December 2020. The IO read out the email to Person A.

44. Person A referred to the agenda for the Council meeting in December 2020. Item 248/20 was entitled "Communications". Person A said that this was a general heading and was made up of a number of general communication issues and did not just refer to the Communications Committee. Person A said that members were invited to add items to the agenda and that it was for [redacted] to order the agenda items.

45. The IO referred Person A to the agenda and specifically items 2 a, b and c and 3 of 248/20. Person A said that these should not be left to the Communications Committee as all the members should be engaged.

46. Person A then spoke about the design brief for the website. She said tha[redacted] should be involved with any contracts, but that Councillor Martin had stopped Person A from seeing any information around the website and Person A said that the design brief had not been seen by anyone outside of the Communications Committee. Person A said that they felt that Cllr Martin had refused to allow them to be involved in the website acquisition. Person A said that [redacted] they should have been involved in the procurement of the website.

47. Referring back to the agenda item 2, a, b, and c and 3, Person A confirmed that they had been asked that these items were added to the agenda. Person A said that [redacted] to have a reason not to put something on the agenda. Person A said that the agenda item had been put forward in accordance with the KCC's procedures.

48. The IO referred back to the email from Cllr Martin dated 9 December 2020. In response to how they felt when they received the email, Person A said that this was not the first email of this nature they had been sent by Cllr Martin. Person A said that this was not an isolated incident and that they had learnt "what they should do".

49. Person A said that once the agenda is set an item cannot be removed and that they were confident about what they should do. Person A said that when they got emails from Cllr Martin that they would be an attack and would be a challenge to them [redacted] and also to them as an individual. Person A said that they thought it was bullying. Person A said they would "be shuddering" when they read the emails from Councillor Martin, but that they would always check everything and that they were confident that they had not done anything wrong. Person A said again that it was bullying and that it had such an effect upon them and that it was not appropriate.

50. Person A said that the email of 9 December 2020 was a pattern. They said it was the culmination of emails and conversations. They said that if Cllr Martin did not like what you said that she would challenge you and "bombard" you with emails. Person A said that they always challenged themself to ensure that what they had said was correct. However, this would not be the end of the matter. Person A said that Cllr Martin would check what Person A had said. Person A said that Cllr Martin would check with the people that Person A had taken advice from to make sure that what Person A said was right.

51. Person A said that Cllr Martin never accepted that Person A was right. Person A said that they knew that they had to manage until the next meeting/issue. Person A said that [redacted], they constantly questioned themselves and felt that this was an attack on their confidence by Cllr Martin.

52. Person A said that if they did not immediately respond to an email that Cllr Martin would telephone them, and that Cllr Martin's phone calls were aggressive.

53. The IO asked Person A about the telephone conversation that the Complainant had referred to in the complaint. Person A said that the Complainant had asked them how they were after they had received the email on 9 December, Person A said that they told the Complainant that they had spoken to Cllr Martin.

54. The IO asked Person A how they responded to the telephone call. Person A said that they tried to set out why they did things. They said that they came off the call traumatised and feeling physically sick. Person A became distressed whilst they were recounting the call to the IO but said that they wanted to continue the interview. Person A said that [redacted] they did not know where the anger and hostility was coming from. Person A said that they felt emotionally "hit over the head". Person A said that they spoke to their doctor [redacted]. They said that they did not raise any issue at the time and that they "suffered in silence" all over an agenda.

55. Person A said that they did look at improving their coping mechanisms and that they completed some additional training around empowerment and building confidence, Person A confirmed that they paid for these courses themselves.

56. Person A said that the [redacted] in July 2021, and that Councillor Martin has been away and has only attended a couple of council meetings since then. Person A said that Cllr Martin attended the November 2021 council and that they anticipated that Cllr Martin would attend the April meeting and the annual council meeting in May 2022.

57. Person A said that since Cllr Martin had not attended meetings regularly, they had received only a few emails from them. Person A said that they felt that the atmosphere in the Council had improved during this time and that relationships have also improved. Person A said that the Council was only formed in May 2019 and was still a "young" Council.

58. The IO asked Person A what training the members of the Council had had. Person A said that all members had been offered the "Dynamic Councillor" course. Person A said that Cllr Martin was an experienced councillor who had attended the training.

59. Following their interview Person A provided a full copy of the email of 9 December 2020, which included a final sentence which was not referred to in the complaint. The sentence is set out below:

"Please also respond to this email by close of business today (Close of business being the nationally recognised cob not the version conveniently created recently by Cllr Z)"

60. Person A has subsequently been asked to provide their recollections of the telephone conversation with Councillor Martin on 9 December 2020.

61. Person A submitted an email dated 27 October 2022 with further details. Subsequently, in order to seek further clarification on some of the content of the email, a second interview as arranged with Person A which took place on 28 February 2023.

62. In the email of 27 October 2022, a copy of which is attached as Appendix G to this report, Person A said:

> *"My recollection of each engagement with Cllr Martin will be the same as all and any engagement I have with any councillor wishing to force Council to run their way and way outside of the parameters of what I know to be correct* [redacted]
>
> *I know I also said Councillor Martin as an ABC Councillor, a cabinet member for ABC council previously responsible for information and communication, a Councillor in many parishes with the Ashford area, the rules are the same no matter which Council you are on as we all abode by the Local Government Act 1972 and you will be aware and to the Standing Orders adopted by this Council (sic).*
>
> *I know I also invited Cllr Martin to share anything she could to substantiate their claims bearing in mind she was taking a lot of guidance to try and prove me wrong* [redacted] *I also advised Cllr Martin I had also spoken to the* [redacted] *and the advice I had differed to hers so if I am looking at this the wrong way, please and I know I almost pleaded for her to show me as she was always so cruel with her adamancy.*
>
> *I know I would have shared all I would have spoken with and everything I had received in guidance and quoted the Local Government Act and Standing Orders as I did do then and would still do now. Nothing has changed in this regard" ….*

63. Person A has also provided copies of the following documents:

Email of 6 August 2020, 16.17 which is attached as Appendix H to this report.

Emails of 4 November 2020 23.34 and 23.37 which are attached as Appendix I and J respectively.

Email dated 7 August 2020 which is attached as Appendix L

Extract of Councillor Martins Facebook page

64. In their interview of 28 February 2023 ("Interview 2") which is attached as Appendix K to this report, Person A was asked specifically what their recollections were about the alleged telephone conversation with Councillor Martin.

65. Person A said that the Subject Member telephoned them after they had sent them an email earlier that day about the agenda for the Council meeting that was to take place that evening.

66. Person A said that the Subject Member told them during the conversation that they were to remove the two "communications" items on the Council agenda that evening (9 December 2020). Person A said that the Subject Member said to her that they were just [redacted] and that they would do as they were told by the Subject Member, that Person A was wrong and did not know what they were doing.

67. Person A said that the Subject Member said that she had taken advice about Council Standing Orders [redacted], the KALC advisor and KALC and they were right, and Person A was wrong.

68. [redacted].

69. Person A said that the Subject Member was adamant that the items on communications should not be on the agenda. Person A said that the real issue was that the Subject Member did not put the items on the agenda herself, it was at the request of another councillor.

70. Person A said that the Subject Member's tone during the telephone conversation was vicious. Person A thought that the Subject Member was trying to scare the Person A to change the agenda. Person A said that the Subject Member was angry during the telephone call and that they were talking at Person A very quickly and did not allow Person A a chance to speak. Person A said that the Subject Member was almost "spitting bullets" at them and that would not accept anything that Person A said.

71. Person A said what made the situation worse was that the Subject Member was an experienced councillor and knew how the processes worked. Person A said that they felt that the Subject Member was trying to force them to go down a particular route but said that they stood their ground as to what their approach to the agenda should be as they knew what they should do.

72. Person A said that the Subject Member did not shout at them during the telephone conversation, but that the Subject Member was forceful and aggressive in tone. Person A said that it was the worst that anyone had spoken to them in their whole professional career. Person A said that there was no courtesy or politeness during the conversation.

73. Person A recalled that at the end of the conversation that they said to the Subject Member that they would look into the situation. Person A said that the Subject Member then said that she would talk to other councillors about the agenda and that she would tell the other councillors that Person A had not done what they had been asked to do and that they were wrong. Person A said that the Subject Member said she would raise this at the council meeting that evening and tell the councillors and the public that Person A [redacted] was wrong and had not made the changes to the agenda that she had been asked to.

74. Person A said that they thought that the Subject Member was trying to undermine them [redacted] and to force them[redacted]

75. Person A said that this made them feel awful. They said they could not understand what they had done to warrant such an attack from the Subject Member. Person A said that they viewed the conversation as a "threat" and that it made them feel undermined and it "floored" them. They said that it undermined their confidence in themselves, and they started to question themselves.

76. Person A said that they came off the call shaking and trembling and that it had made them feel physically ill. They said that they cried when they came off the call. They said that it was this telephone conversation that made them seek some support in the shape of additional training to try to improve their coping mechanisms in dealing with the Subject Member moving forward.

77. Person A said that the Subject Member had been hostile to them before the telephone conversation on 9 December 2020, but that they felt that this telephone conversation was more aggressive and angrier and that the reason that the Subject Member called them was to try to undermine them and force them to change the agenda in the way the Subject Member wanted them to.

78. Following their second interview Person A raised two further points in an *email of 2 March 2023, which are set out below:*

> *… "Additionally, I would like to add the Councillor Jane Martin suggested I was being coerced by favoured members to put items on an agenda and one of the reasons they insisted the agenda items must be removed immediately. To respond to this I do not and will not favour members* [redacted]
>
> *And I do remember offering a way forward and that was for me to say something we could agree on behalf of the Communications committee and that was on the lines of the following agenda items have come from a Councillor not the Communication committee and I have had a request from the Communications Committee or the Chair of the Communications Committee that this be deferred to a later meeting or that Councillor Martin may like to say something on these lines"…*

Findings of Fact

79. This section addresses the specific issues raised by the Complainant, the Subject Member's response and the evidence given by both, as well as the other evidence collated. Section 2, Factual Context, contains the relevant facts which are on the record.

80. Councillor Martin has been a councillor at KCC since July 2019. At the material time of the complaint, she was also the Chairman of the Communications Committee of KCC.

81. The first aspect of the complaint concerns an email sent by Councillor Martin at 11.35 on 9 December 2020 to Person A, copied to all members of KCC. The email initially requested an explanation of item 248/20 on the agenda for the Council meeting that was to take place that evening. The email goes on to state that … "I expressly asked for one main item and the minutes of our meetings as the only two items to be tabled. Neither myself nor the Committee has asked for items 2 al, b, c, or 3 to be added on the agenda nor [redacted] at all on these items." Councillor Martin then "requests and insists" that the agenda items are removed" At 12.53 on 9 December 2020, the Complainant responded to Councillor Martin's email, again copied to all councillors and Person A. The Complainant refers to KCC's Standing Order s15 bii and 9 e, [redacted] The email further states that …" I would therefore respectfully request Person A to be guided by these Standing Orders unless they are aware of other provisions that override them"…

82. In her email response of 13.07 Councillor Martin states…"it appears that you (**the Complainant** *(my insertion))* are again seeking to **coerce** (my emphasis) Person A into taking a particular approach, and this is most concerning"…"Your speedy response clarifies that these items are on the Agenda because you [redacted] and no doubt Cllr Z, wish them to be there, and not because they are required or requested by the mandated Committee"… This response was copied to Person A and to all councillors at KCC.

83. The Standing Orders referred to in the Complainant's email above, were adopted by KCC at its Council meeting on 19 June 2019. Standing Orders govern council operations. Standing Order 9 governs motions for a meeting that require written notice[redacted] and Standing Order 15 refers to the [redacted] functions.

84. It is clear from the Complainant's email of 20 November 2020, that they had requested that a number of motions, including item 148/20 i 2 a, b, c and 3 be included on the agenda for the Council meeting on 9 December 2020 and that this request was in accordance with Standing Order 9. As such the motions were lawfully placed on the agenda.

85. The second element of this complaint refers to a telephone conversation which allegedly took place between Councillor Martin and Person A. Whilst it has not been possible to confirm with Councillor Martin that this conversation took place, Person A, in their evidence is clear that it did, and they refer to a conversation that was had with the Complainant when they said that they had spoken to Councillor Martin about the email of 9 December 2020. The Complainant refers to that conversation in their evidence and also details what they believe was the content of that conversation. Therefore, on balance I find that the conversation between Councillor Martin and Person A took place, and that logic dictates that this conversation took place prior to the Council meeting on the evening of 9 December 2020.

86. The Complainant's complaint sets out in detail what their recollection of the Person A's account of the conversation of 9 December 2020 was, which included the length of the call (40 minutes). Of particular relevance is the alleged comment…" If the items were not removed there would be a scene and it would explode at Council" …

87. Person A's initial interview and their email of 27 October 2022 provide details of the tone of the conversation; it does not go into the same level of detail as to the content of the conversation as the Complainant does in their complaint.

88. However, in Interview 2, which focussed on what was said during the telephone conversation, the evidence is clear as to their recollections of what was said during the conversation as well as the impact upon them.

Comments on Draft Report

89. The draft Report has been peer reviewed by Hoey Ainscough Associates Ltd who are nationally recognised experts on Code of Conduct related matters to ensure consistency of standard with other such reports nationally.

90. The draft Report has been sent to the Complainant and Subject Member for their comments in accordance with ABC's arrangements for dealing with Code of Conduct complaints.

91. No comments have been received from the Subject Member.

92. The Complainant has raised several observations, which I have commented upon as set out below.

93. The Complainant has clarified that the Subject Member was not a KCC councillor in May 2019 and that she became a councillor on 10 July 2019. Paragraphs 7 and 80 of the report has been amended accordingly.

94. Paragraph 8 has been amended to include the fact that Councillor Martin was also a member of another local parish council at the time of the complaint. Whilst this is not specifically relevant to this investigation it has been included to provide context, and underline the fact, already set out in the report that the Subject Member is, or was, an experienced councillor.

95. The Complainant has highlighted a slight inaccuracy in their evidence regarding in paragraph 25. The timings relating to the appointment and resignation of a previous Parish Clerk have been amended to read. ..." a Parish Clerk was appointed in July 2019; however, they left post after little than a month" …

96. The Complainant has clarified that the reference in paragraph 29 "to procure the website" should read "to conduct the procurement of the website" as the decision to award the contract was taken by Full Council. Paragraph 29 has been amended accordingly.

97. The Complainant has suggested that the statement in paragraph 47 that Person A" has to have a reason not to put something on the agenda" is a little imprecise and has offered alternative wording. However, as this statement is part of the approved summary of the evidence provided by Person A it would not be appropriate to amend.

98. The reference to Councillor Martin in paragraph 56 has been amended to the Complainant who was [redacted] at that time.

99. The Complainant has asked for confirmation that the Subject Member attended the "Dynamic Councillor" training as he was not aware that she had attended

the session organised by KCC. Person A's evidence in paragraph 58, states that the Subject Member was an experienced councillor who had attended the training. Person A has confirmed that their understanding is that the Subject Member has previously attended the "Dynamic Councillor" and she did not attend the session arranged by KCC.

100. Paragraph 67 refers to the KALC advisor. For clarity the KALC advisor is the Local Councils Adviser, Learning and Development Manager at KALC (Kent Association of Local Councils).

101. The Complainant has suggested that Paragraph 159 could refer to Person A's evidence that the Subject Member would check the accuracy of the advice given by them to the Council, with those providing the advice to Person A. Paragraph 50 of the report is referenced. Whilst there is no direct evidence on this point, the email exchanges in Appendices H and L do indicate a pattern of behaviour in that the Subject Member would "check" the advice provided by Person A. Paragraph 140 has been amended to reflect this point.

102. The Complainant's substantive points relate to the conclusions in respect of the finding that Councillor Martin bullied Person A during the telephone conversation of 9 December 2020. In summary, the Complainant agrees with the finding in the report, however, believes that the evidence shows that Councillor Martin repeatedly pressed Person A to withdraw the items from the agenda, although there was no legal basis to do so, which he contends Councillor Martin knew this was the situation as she was an experienced councillor. The Complainant states that Councillor Martin then threatened Person A that if the items were not removed there would be..." a scene and it would explode in Council" ... and it was only then that Councillor Martin said that she would inform the Council that Person A has failed to take advice.

103. It is clear from the two interviews and email correspondence from Person A that the reason Councillor Martin telephoned them was to repeat her demand, already made in her email to Person A earlier on 9 December 2020, that the two communications items should be removed from the agenda.

104. The complaint submitted by the Complainant refers to a conversation he had with Person A, about the telephone conversation prior to the Council meeting. The Complainant's recollection of the discussion is clear, that if the items were not removed from the agenda, Councillor Martin said that there would be a scene and that it would explode in Council.

105. However, whilst Person A's evidence is clear on the emotional impact the telephone conversation had on them, in neither interview, particularly the second interview which was undertaken to obtain more detail as to what was said during the telephone conversation, nor in their written submission, is there reference to Councillor Martin using those specific words.

106. In my view, whilst there is some conflict between the Complainant and the Person A as to the exact words used during the telephone conversation, what is clear is that when Person A would not agree to Councillor Martin's request, that Councillor Martin threatened Person A that she would criticise them publicly for not removing the items. In my opinion, the threat to raise this in public, and effectively complaint about the performance and competency of Person A in public, was to try to intimidate Person A to take a particular course of action (remove the said items from the agenda) which in my view, constitutes bullying.

107. Having considered the Complainant's comments on this finding, I agree that the reasoning and conclusions set out in what are now paragraphs 187 and 188 could reflect more clearly the evidence already in the report, and I have amended the conclusions accordingly. My conclusion remains that the Subject Member's behaviour amounted to bullying of Person A, however, now reflect the differences in the recollections of both the Complainant and the Person A, but that whatever the exact words used during the telephone conversation, the threat by Councillor Martin to criticise Person A in public, amounted to bullying behaviour.

Conclusions

108. I am satisfied that all the relevant conduct is within the scope of the Code of Conduct as Councillor Martin was acting in her capacity as a councillor at the material time.

109. The complaint can be separated into two parts: the email sent to Person A by Councillor Martin on 9 December 2020 and secondly the alleged subsequent telephone conversation that took place between them on 9 December 2020. This report will deal with each aspect of the complaint separately and the relevant elements of the Code of Conduct.

Email of 9 December 2020

Respect

110. Paragraph 1 of KCC's Code of Conduct places an obligation on Members that they "shall behave in such a way that a reasonable person would regard as respectful".

111. There is no definition of respect or respectful behaviour in the Code of Conduct, however, as is clearly envisaged by the obligation, account must be taken of how "a reasonable person" would view the behaviour as well as the intent of the member. The test is an objective one.

112. Standards for England (SfE) which was the body responsible for the oversight of the code of conduct before the introduction of the Localism Act 2011 published guidance, which whilst it is not binding on cases under the Localism Act, where the Code has similar provisions (which is the position here) it provides useful assistance.

113. The Standards for England case Review 2010 (updated and issued in 2011) is clear that a …" very clear line has to be drawn between the Code of Conducts' requirement of respect for others…and the freedom to disagree with the views and opinions of others" …

114. The obligation to be respectful does not mean that members cannot criticise or disagree with officers. Q22 of the Case Review 2010 states that ..." this disagreement might, in the appropriate context, manifest itself in criticism of the way in which an officer or officers handled particular matters" …." if a member's criticism is a personal attack or is offensive in nature it is likely to be unacceptable.

115. The current guidance issued by the Local Government Association in July 2021 ("LGA Guidance") whilst post-dating this complaint, concludes that "it is only where councillors conduct is unfair, unreasonable or demeaning that the Code will be relevant. If a councillor's criticism is abusive or offensive, it is likely to breach the Code". A copy of the LGA Guidance is attached as Appendix M.

116. Individuals should not be subjected to unreasonable or excessive personal attack, however the threshold for what is "disrespectful behaviour" is set at a relatively high bar. The view taken by the former Adjudication Panel in *Capon v Shepway District Council [2008] APE0399* is that the: ...

> *"Threshold for a failure to treat another with respect has to be set at a level that allowed for the passion and frustration that often accompanies political debate and the discussion of the efficient running of a council within the context of those involved in the exchange." The Tribunal felt that it was important that ..." members should be able to express in robust terms concerns that they have about any aspect of the running of the council, and this can include criticism of the way in which an officer handles particular matters".*

117. In the *Capon* case, the councillor made comments about the town clerk at a parish meeting saying that an officer found her "difficult to get on with". He added that "this is also the view of many towns people who say that when they try to contact the town clerk, she is downright rude to them". The Appeals Panel considered that the Town Clerk who had been in post since 1999 (the complaint was made in July 2006) was …" clearly very experienced in her dealing with the councillors …and given her seniority within the administration of the council was clearly able to defend her position" … From this it is clear

that the more senior the officer "the broader shoulders" he or she is expected to have with regards to members conduct.

118. However, balanced against this is the protection given to political comment under Article 10 of the European Convention on Human Rights ("ECHR"). In *Heesom v Public Services Ombudsman for Wales (2014) EWHC 1504 i*t was held that:

- Article 10 of the ECHR protects not only the substance of political comment but the form in which it is conveyed.
- A degree of immoderate, offensive, shocking, disturbing, exaggerated, provocative, polemic, colourful, non-rational and aggressive behaviour is to be tolerated.
- Political comment includes comment on public administration and the adequacy of the performance of public duties by others, but not gratuitous personal comments.
- Whilst civil servants are open to criticism, there is a public interest that they are not subjected to unwarranted comments that disenable them from performing public duties and undermines public confidence.
- There is a need to weigh up the public interest in protecting civil servants against enhanced protection for political comment.

119. It is clear from this that a councillor can properly challenge and comment on the performance of officers as well as scrutinise policy, however this must be done in the correct way and in the appropriate forum and follow the council's processes and procedure.

120. Councillor Martin was clearly annoyed about the inclusion of items 2 and 3 in 248/20 of the Communications section of the Council agenda of 9 December 2020. However, the items were placed on the agenda by the Complainant in accordance with KCC's Standing Orders. Whilst it may have been courteous to inform Councillor Martin of their inclusion there is no requirement to do so.

121. The tone of Councillor Martin's email, as the Complainant, says, is "superficially polite"; she asks for an explanation as to why the items had been included, but then "request and insists" that the agenda items are removed without waiting for said explanation. The Complainant says that this instruction to Person A to remove the items resulted in Councillor Martin being in breach of SO25(a)ii and that the request would have placed Person A in breach of SO9. However, at the stage that Councillor Martin sent the email at 11.35 on 9 December, she could not reasonably have known, from looking at the agenda, that these were motions put forward by a member. Her email was seeking an explanation, which in my opinion, she was entitled to do, especially as she was the Chairman of the Communications Committee.

122. In their evidence, the Complainant said that he did not consider the email "bullying" but that it was a "strong request" to the Person A, which he would expect Person A to be able to respond too.

123. Councillor Martin would have received the agenda three days before the meeting but did not raise her queries until the day of the meeting. Unfortunately, I do not have any evidence from Councillor Martin as to why this was the case, or indeed on any other aspect of the complaint.

124. Whilst it would have been helpful to try to deal with any queries before the day of the meeting, it is not uncommon to be responding to queries at short notice. The last sentence of the full email, referring to the definition of "close of play" is slightly sarcastic, but could not be classed as a personal attack or offensive to Person A. As the Complainant has said, the points raised about Standing Orders are procedural points that Person A should clarify, and I do not consider that a "reasonable person" would consider that Councillor Martin, in sending the email of 9 December 2020, behaved in a way that was disrespectful.

125. I conclude that Councillor Martin has not breached paragraph 1 of the Code of Conduct by sending to Person A the email timed at 11.35 on 9 December 2020.

Bullying

126. Paragraph 2 of KCC's Code of Conduct requires that a member shall not act in a way which a reasonable person would regard as bullying or intimidatory. Whilst there is no legal definition of bullying, the Independent Advisory Conciliation and Arbitration Service (Acas) describe it as:

> "*Unwanted behaviour from a person or group that is either:*
> *Offensive, intimidating or insulting.*
>
> *An abuse or misuse of power that undermines, humiliates or causes physical or emotional harm."*

127. The LGA Guidance goes further and expands upon what physical and emotional harm is, which includes making a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. It goes on to state that bullying behaviour may be obvious or hidden and insidious.

128. However, the LGA Guidance goes on to state that:

> "*Bullying behaviour should be contrasted with the legitimate challenges which a councillor can make in challenging policy or scrutinising performance. An example of this would be debates in the chamber about policy or asking officers to explain the rationale for the professional*

opinion they have put forward. You are entitled to challenge fellow councillors and officers as to why they hold their views. However, if your criticism is a personal threat or abusive or offensive in nature, you are likely to cross the line of what is acceptable."

129. As with cases regarding respect, account has to be taken of the protection given to political comment under Article 10 and the relatively high threshold that needs to be reached for members behaviour to constitute bullying.

130. KCC's Code of Conduct refers to bullying and intimidatory behaviour separately. However, as can be seen from the guidance, bullying incorporates intimidating behaviour.

131. As referenced in paragraph 120 dealing with paragraph 1 of KCCs Code of Conduct, the email of 11.35 on 9 December, whilst being of a challenging nature, was borne out of annoyance regarding the inclusion of the agenda items 248/120 2 and 3, which Councillor Martin, was not aware of.

132. Person A has forwarded a number of emails received either directly from Councillor Martin or to which she was copied in.

133. It is clear from the interviews with Person A that they found contact with Councillor Martin very difficult. In their interview they said when they received emails from her, they were an "attack" and would be a "challenge to them [redacted], and an "individual". They also said that they would be "shuddering "when they read the emails from Councillor Martin and that Councillor Martin never accepted that they (Person A) were right. They said that the email of 9 December 2020 from Councillor Martin, …" was not the first email of this nature that they have been sent by Councillor Martin". They also said that "this was not an isolated incident" and that the email of 9 December 2020 was "a pattern" and a "culmination of emails and conversations".

134. [redacted].

135. The emails provided by Person A relate to issues around the operation of KCC. In the main Person A is copied in to email correspondence from Councillor Martin to the Complainant. There are two emails of 4 November and 9 December relating to website training. The 9 December 2020 email does refer to Person A, that they have …"no power or authority to do anything on the site" other than [redacted]. There was also an email of 6 August 2020 from Councillor Martin to the Complainant regarding the inclusion of matters arising on the agenda for

council meetings, and why KCC could do as other councils and "not reinvent the wheel" and include them as others do. The emails referred to are in Appendices H, I and J.

136. Q24 of the Case Review consider that ..." Although many minor acts can cumulatively amount to bullying, the subjective view of the victim or witness needs to be supported by objective evidence of action that can amount to bullying…. anyone challenging a pattern of behaviour should provide some examples of the words or actions used".

137. The Case Review goes on to state that general statements such as… "the member has repeatedly intimidated and denigrated me".. are not adequate. Dates, times, and specific details of the conduct complained about are required. In their evidence Person A has detailed their response to the emails, and that perceives them as bullying, but does not go into detail of how it was personally abusive or intimidating. The email was blunt and challenging, however, was asking a legitimate question about the agenda.

138. Councillor Martin clearly emails Person A and her councillor colleagues on a regular basis, and Councillor Martin (and it must be said other members and Person A) copy all councillors and Person A into emails when it may not be appropriate to do so. This is a pattern of behaviour. However, in my opinion, the email of 11.25 of 9 December 2020, nor the other emails sent directly to Person A, could be characterised as offensive or intimidating towards the Person A or an abuse of power, which could make them feel vulnerable, upset or threatened.

139. Councillor Martin does appear to have a number of issues around the procedures for meetings, however, Person A clearly felt confident to send a very detailed and robust response to Councillor Martin on 7 August 2020 setting out the legal position in respect of the point on matters arising, a copy of which us attached as Appendix L.

140. I conclude that Councillor Martin has not breached paragraph 2 of the Code of Conduct by sending to Person A email at 11.35 on 9 December 2020.

Telephone conversation between Councillor Martin and Person A 9 December 2020

141. With regards to the alleged telephone conversation that took place between Councillor Martin and Person A, for the reasons set out earlier in this report, on the balance of probabilities, and taking into account that Councillor Martin has not engaged with the investigation, I conclude that the conversation did take place.

Respect

142. A member's obligation under paragraph 1 (Respect) of KCC's Code of Conduct is set out in paragraph 110 of this report, and what constitutes conduct that breaches that obligation is detailed in paragraphs 114 -120 of this report.

143. The Code of Conduct applies to members when they are acting in their official capacity which includes verbal communications and telephone calls. The telephone conversation between Councillor Martin and Person A was in respect of the agenda for the Council meeting that evening and as such, there is no doubt that Councillor Martin made that call in her official capacity.

144. As has been considered in paragraphs 114 and 115 of this report, the obligation to treat others with respect does not mean that members cannot disagree [redacted]

145. The threshold for what is disrespectful is set at a relatively high bar, and as considered in paragraph 116 of this report, it must allow for *…" the passion and frustration that often accompanies political debate and the discussion of the efficient running of a council within the context of those involved in the exchange" …*

146. The Tribunal in the *Capon* case referred to in paragraph 116 of this report, stated that …"*it was important that …members should be able to express in robust terms concerns that they have about any aspect of the running of the council and this can include any aspect of the running of the Council, , and this can include criticism of the way in which an officer handles particular matters"..*

147. The Complainant's recollection of the telephone conversation, as relayed to them by one of the participants, Person A, is very detailed, and relatively contemporaneous. In their evidence Person A recalls telling the Complainant about the telephone call as the Complainant asked them how they were feeling after receiving the email. In their evidence the Complainant said that the Complainant's main concern was the telephone conversation which came "on the back" of a year of such phone calls, and was in effect, the reason that they submitted their complaint.

148. In their evidence about the telephone conversation, Person A, said that during the call they tried to set out "why they did things". They said that they came off the call "traumatised and feeling physically sick". They said that [redacted] they did not know where the "anger and hostility" was coming from, and that they felt emotionally "hit on the head".

149. Person A said that during the telephone call that Councillor Martin told them to remove the two "communications" items from the agenda. [redacted] Councillor Martin told them that they [redacted]

would do as they were told" … and that Person A ..." was wrong and did not know what they were doing". In their email of 27 October 2022, Person A refers to Councillor Martin taking guidance from others "in trying to prove them wrong" [redacted]

150. Person A said that Councillor Martin was "…adamant" that the items should be removed, and her view was that this was because it was another councillor who had asked for them to be included and not Councillor Martin.

151. Person A said that Councillor Martin's tone during the telephone conversation was "vicious". They said that Councillor Martin was angry and talking very quickly to them. Person A said that Councillor Martin was almost "spitting bullets" at them and that she would not accept anything that Person A said. They said that Councillor Martin did not "shout" during the call but her (Councillor Martin's) (my insertion) tone was forceful and aggressive and there was "no courtesy or politeness". They said that ..." it was the worst that anyone had spoken to them [redacted]

152. Person A said that at the end of the conversation Councillor Martin said that she would tell the other councillors that Person A had "not done what they had been asked to do" and that they were wrong, and that she would also raise this at the council meeting that evening and tell the councillors and the public that [redacted] Person A was wrong including the two communications items on the agenda.

153. Person A said that they felt undermined by the telephone conversation and that Councillor Martin was trying to undermine them and [redacted]. They said that they viewed the conversation as a "threat" and that they felt undermined and started to question themselves.

154. It is clear that the telephone conversation affected Person A deeply, as shown by their evidence.

155. Whilst the Complainant was not a party to the telephone conversation the subject of the complaint, their account of the telephone conversation is the most contemporaneous. In their interviews and email of 27 October 2022, Person A provides detailed evidence as to the content of the telephone call, that they were being "forced "by Councillor Martin to change the agenda; Person A was wrong to include the two items on the agenda and the telephone call as being similar to being "hit over the head". In their email of 27 October 2022, Person A refers to Councillor Martin, as taking guidance from others in "trying to prove them wrong" about the inclusion of the agenda items.

156. From the evidence, it seems that all of the questions from Councillor Martin were directed at trying to remove items 2 and 3 at 248/20 of the agenda. Also,

from the evidence it is clear that that there is a degree of, what I can only refer to as hostility, regarding the website which is referred to later in the report.

157. Unfortunately, I have been unable to interview Councillor Martin as part of this investigation, and as such I have not had her recollection of events.

158. However, based on the evidence from the Complainant and Person A even without Councillor Martin's evidence, I believe that the tone of the telephone conversation was more than challenging, and that Person A's recollection of the emotional impact upon them is clear, which I do not doubt.

159. It seems clear that Councillor Martin was challenging the procedural legality of including these items on the agenda and was seeking to persuade Person A to remove them. Reference is made by the Complainant and Person A to Councillor Martin referring to how other authorities deal with these issues, and paragraph 50 refers to Councillor Martin checking the accuracy of Person A's advice. In their evidence Person A said that Councillor Martin told them they were "wrong" in how they dealt with the request to include the communication items on the agenda and that they should be removed. This could be seen as undermining Person A, (which they clearly felt)[redacted]

160. Person A, however, seems to have dealt with, what was clearly challenging behaviour from Councillor Martin appropriately as can be seen from their email of 27 October 2022. It should also be noted that items 2 and 3 were not removed from the agenda for 9 December 2020. However, the fact that Person A was able to deal with the behaviour does not mean that the behaviour of Councillor Martin was appropriate or acceptable.

161. Councillor Martin is challenging the procedure, which she is entitled to do, and as set out in *Capon*, this can be done in "robust terms". However, Councillor Martins' tone and manner was not of a standard that you would expect from a councillor [redacted]

162. In my view, however, of concern is the Complainant's recollection of Councillor Martin saying to Person A "…if the items were not removed, there would be a scene and it would explode in Council..." Whilst the majority of the conversation is around the procedural points, if this was said, in my view it could tip the balance towards disrespectful behaviour, as it is threatening Person A[redacted].

163. Whilst there is some conflict between the Complainant's recollection of what Person A said to them about the contents of the telephone conversation and that Person A's evidence of what Councillor Martin said to, whatever the exact

words used, it is clear that the words used were a threat to criticise the Person A publicly.

164. Person A is clear in her evidence that if they did not remove the agenda items that Councillor Martin asked, Councillor Martin would tell the other councillors that they had not done as they had been asked to so, and that she would raise this at the council meeting and "…tell councillors and the public" that Person A was wrong.

165. Unfortunately, as Councillor Martin has not engaged with the investigation it has not been possible to take into account her view on what was said and the tone of the conversation. Whilst there is no obligation in the current KCC Code for a member to co-operate with an investigation, the LGA guidance in respect of the Model Code of Conduct states that "...Failure to co-operate will not stop an investigation but may simply drag matters and does not allow you to put your side of the story so increases the risk that inferences are drawn about your unwillingness to co-operate, and you will be found in breach of the Code of Conduct".

166. However, in my view the evidence referred to in this report does provide an insight into how Councillor Martin deals with other people.

167. Of particular note in this regard, are the two emails of 4 November 2020 provided by Person A, which were sent to the Complainant by Councillor Martin, and are attached at Appendices I and J to this report. The relevant sections of the two emails of 4 November 2020, send at 23.34 and 23.37, which again are copied to members and Person A, are set out below:

> *"Dear the Complainant*
> *There you go again fabricating as it suits you. I did not suggest you attend training* [redacted] *or with members of the committee for that matter.*
> *It is not necessary or appropriate that you are at the training – period. I am Chair of Communications and it is my decision.*
> *Please accept that and respect the decision as we often have to accept yours at Full Council"*
>
> *Further the Complainant*
> *Person A has no power or authority to do anything on the site other than enact decisions taken by Comms team and ratified by Full Council….*
> *Your hubris appears to be getting the better of you! I re-iterate that it is not necessary nor are your feeble arguments as to why you feel the need to attend adequate…*
> *Kind regards…."*

168. Although the emails do not relate specifically to this complaint, they do provide context. The tone of the exchanges with the Complainant, [redacted] can only be described as rude and aggressive. If Councillor Martin felt that it was acceptable to use this approach and tone [redacted] and copied her response to the other KCC councillors, then it is reasonable to conclude that she would be willing to be rude to Person A during the telephone conversation of 9 December 2020.

169. In my view, the evidence from Person A, which was recounted to the Complainant relatively shortly after the telephone conversation took place, shows on the balance of probability that the conduct of Councillor Martin was not of a level that you would expect of an experienced councillor or conducive to good [redacted] Even though there is no direct evidence from Councillor Martin, taking into account the evidence of the Complainant and Person A, and the difference in their recollections of the exact words used during the telephone conversation, I still consider that there is adequate evidence to show that Councillor Martin did threaten to raise the issue that Person A was wrong in including the communication items on the agenda at the Parish Council meeting on 9 December 2020, if the items were not removed. Taking this into account, and the clear emotional impact that this telephone conversation had upon Person A, who described it as the "the worst that anyone had spoken to them [redacted], I consider that there is adequate evidence to pass the threshold of disrespectful behaviour.

170. I conclude that Councillor Martin could reasonably be regarded as having breached paragraph 1 of KCC's Code of Conduct in that her behaviour towards Person A during the telephone conversation of 9 December 2020 was disrespectful.

Bullying

171. A member's obligations regarding paragraph 2 of KCC's Code of Conduct are set out in paragraph 112 of this report.

172. As set out in paragraphs 54 and 76 of this report, the telephone conversation affected Person A deeply. In their evidence they refer to coming off the call *..." feeling traumatised and feeling physically sick"* ... they said that they were *"just trying to do their job"* and that they did not know where *"...the hostility came from"* …

173. Whilst I have concluded that on balance, Councillor Martin has not treated Person A with respect during the telephone conversation on 9 December 2020, there is a different test to establish whether this conduct also amounted to bullying.

174. The definition of bullying behaviour is set out in paragraph 131 above and the accompanying LGA guidance is detailed in paragraph 132. Paragraph 132 states that … Bullying or intimidating behaviour is …" usually a pattern of behaviour ….and can be via the telephone.

175. It is clear from Person A's evidence, that they were often telephoned by Councillor Martin, particularly if they did not respond quickly enough to an email from Councillor Martin. Person A said that the calls would be "aggressive". In their evidence the Complainant said that one of the reasons they submitted their complaint is that the telephone call of 9 December came..." on the back of a year of phone calls from Councillor Martin" … (paragraph 33).

176. Whilst there appears to be a "pattern of behaviour" in how Councillor Martin contacted Person A, it is what was said during those conversations that is key to establishing whether the behaviour amounted to bullying.

177. In their complaint the Complainant provides a detailed account of what was said during the telephone conversation, as relayed to them by Person A. As noted previously in this report, the discussion took place between the Complainant and Person A soon after the telephone conversation and is probably the most contemporaneous account available.

178. The Complainant states that in the telephone conversation, Councillor Martin said to Person A, that "...if the items were not removed, there would be a scene and it would explode in Council". The complaint also states that Councillor Martin said to the Person A during the conversation that "...her actions were not bullying" …

179. As set out in paragraph 114 of this report, if it were shown that Councillor Martin said this, my view was and is that this could tip the balance towards disrespectful behaviour, and as it could also be seen as threatening Person A [redacted], which could amount to bullying.

180. Bullying behaviour is either; offensive, intimidating or insulting or an abuse or misuse of power that undermines, humiliates or causes physical harm.

181. Paragraphs 136 and 137 of this report reflects the requirement that the subjective view of the victim needs to be supported by objective evidence of actions that can amount to bullying and this means examples of the words or actions used, including specific dates and conduct.

182. In their evidence Person A has clearly set out the emotional impact that the telephone conversation had upon them. They refer to coming off the call…" shaking and trembling and ... feeling physically sick".

183. In addition to the emotional response to the telephone conversation, as referenced in paragraph 54 of this report, I consider that that there is sufficient evidence to conclude, on balance, Councillor Martin did threaten Person A that if the communication items were not removed from the agenda for 9 December 2020, that she would raise this at the Council meeting that evening. As detailed in paragraph 163 of this report of this report, there is some inconsistency in the recollections of the Complainant and Person A as to exactly what was said during the telephone call, but as with my conclusions on respect, whatever the exact words used, they were a threat to criticise Person A in public and that amounts not only to disrespect but also bullying.

184. Person A's evidence also records the impact of the telephone conversation on them, which is detailed in Appendix K. I have no doubt that Person A received a number of telephone calls from Councillor Martin that were aggressive and rude. However, they describe the conversation of 9 December 2020, as the …" *worst that anyone had spoken to them in their whole professional career"* …Person A viewed the telephone conversation as a "threat" and an attempt to force them into doing what Councillor Martin wanted them to. When Person A did not agree with Councillor Martin, her response was to say she would talk to the other councillors and tell them that Person A had not done what she had been asked to do and that Person A was wrong. Person A's evidence, more concerningly states that Councillor Martin said that she would raise this issue at Council and tell the public and the councillors at the meeting that Person A was wrong and had not made the changes she has been asked to make.

185. Person A understandably felt threatened and undermined by this. They said that the conversation "floored them", and more concerning, they felt undermined and that their job was at risk due to what Councillor Martin said to them.

186. As has been pointed out many times in this report, the Code of Conduct is not to be seen as a "gag" on councillors to prevent any challenge to, or make appropriate criticism [redacted]. As with cases regarding respect, account has to be taken of the protection given to political comment under Article 10 and the relatively high threshold that needs to be reached for members behaviour to amount to bullying.

187. Councillor Martin was perfectly entitled to challenge Person A as to the procedural legality of including the two communications items, which they did. However, what is not permitted, is for that challenge to be a personal threat, or abusive or offensive in nature, which in my view, even taking into account the apparent inconsistencies in the evidence referred to in paragraph 163 of this report, it was. In my opinion, Councillor Martin's behaviour during the telephone conversation in threatening Person A that she would raise this publicly at the Council meeting and criticise Person A for not removing the two agenda items,

as requested, "crosses the line" of what is an acceptable challenge and, in my view, constitutes bullying behaviour.

188. I conclude that Councillor Martin could reasonably be regarded as having breached paragraph 2 of KCC's Code of Conduct in that her behaviour towards Person A specifically, threatening Person A during the telephone conversation on 9 December 2020, that she would raise publicly at the Council meeting that Person A would not remove the two communications items as requested by Councillor Martin, constitutes bullying of Person A.

Additional Comments of the Investigating Officer

189. Under the Model Code of Conduct, there is a general obligation, that members agree to co-operate with any Code of Conduct investigation or determination. The associated LGA guidance states:

> "*While being subject of a complaint that you have breached the Code of Conduct, having your conduct investigated may at times be unpleasant and stressful, it is essential that councillors co-operate with any code investigations and determinations. Failure to co-operate will not stop an investigation but may simply drag matters and does not allow you to put your side of the story so increases the risk that inferences are drawn about your unwillingness to co-operate, and you will be found in breach of the Code of Conduct".*

190. Councillor Martin was notified of this complaint on 21 July 2020 and was given the opportunity to respond to the allegations at that point. No response was received from Councillor Martin, and the Deputy Monitoring Officer decided that partly due to this lack of response the complaint needed to be investigated.

191. Councillor Martin was contacted on 14, 23 and 27 February 2022 seeking to arrange an interview. Councillor Martin notified the IO on 19 March 2022 of certain personal circumstances and taking those into account was offered the opportunity to respond to written questions on 12 April 2022. A reminder was sent on 5 May 2022, and on 30 May 2022 Councillor Martin was asked to respond within a set timeline.

192. At that point, Councillor Martin was given a further four weeks to respond. On 13 June 2022, Councillor Martin responded that she would be in touch in the next four weeks as to when she could speak to the IO.

193. On 27 July 2022 a date of 8 August 2022 was agreed for an interview. On 6 August 2022 Councillor Martin informed the IO that she had lodged a complaint with the Chief Executive at ABC and said that the interview should be deferred. The IO suggested that the interview should proceed, however following

consultation with the Monitoring Officer it was agreed that the interview should be deferred.

194. The complaint was responded to and rejected by the Chief Executive on 12 September 2022. The IO contacted Councillor Martin to re-arrange the interview. Councillor Martin confirmed that the decision had been appealed by her.

195. There is no corresponding provision to co-operate with a Code of Conduct investigation in KCC's Code of Conduct, however, paragraph 1 of its Code of Conduct does require a member, when acting in his or her capacity as a member to …" behave in such a way that a reasonable person would regard as respectful." …

196. The definition of respectful is broader than treating individuals with respect, if your behaviour is respectful, you show respect for someone or something. In this context the something is the duly adopted arrangements for dealing with Code of Conduct complaints.

197. A member's declaration of acceptance of office states that they will abide by the Code of Conduct. ABC has adopted arrangements for dealing with complaints, and the complaint has been referred for investigation under those adopted arrangements, which are required as a matter of law.

198. Councillor Martin has not engaged with the complaint since it was submitted. She did not respond to the original complaint of 1 March 2021.

199. The complaint was referred for investigation in July 2021. The IO was appointed on 2 February 2022. Whilst it is noted that there was a delay in the appointment, since that date, there has been communication with Councillor Martin, but no engagement with the investigation itself.

200. It is important to note, that Councillor Martin's personal circumstances were taken into account as part of this delay, and the appropriate allowances were given in what was a difficult time.

201. However, Councillor Martin's actions in submitting a complaint, immediately prior to the interview date, which she had agreed on 27 July 2022, can, I believe, be seen in no other way, than trying to frustrate the process, or indeed stopping the complaint being investigated.

Recommendations

202. On the balance of probability, my findings are that Councillor Martin has not breached paragraphs 1 and 2 of the Code in respect of the email exchange of 9 December 2020. With respect to the subsequent telephone conversation, my

findings are that Councillor Martin has, on the balance of probability, breached paragraph 1 and 2 of the Code, with respect to the tone and manner she used towards Person A, as well as the content of the telephone conversation.

203. In making these findings, I would strongly encourage Councillor Martin to reflect on her actions, and particularly that any comments, either verbal or in writing should be made in a respectful and courteous way. Consideration should also be given to the fact that [redacted] Person A and that they are entitled to expect the workplace to be a positive environment in which to work.

204. I would strongly recommend that KCC review its current Code of Conduct, which has not been updated since it was adopted in May 2019. The current code, which I would describe as "light touch" does not have any obligations with regard to disrepute, which could have been engaged in respect of this investigation.

205. The Code of Conduct does not prevent members from challenging each other [redacted], however, this should be done in the right way and in the right place. KCC does not have a Member/Officer Protocol and I would strongly recommend that it considers adopting one. [redacted] The adoption of such a protocol ensures that everyone knows what is expected of them.

206. Finally, I would also recommend that KCC considers signing up to the "Civility and Respect Pledge" being promoted by NALC/SLCC and OVW. By signing up to this pledge, KCC could show that it is committed to standing up to poor behaviour and supporting civil and respectful behaviour.

Verina Wenham

Investigating Officer

SCHEDULE OF EVIDENCE

- **Appendix A: Decision Notice dated 30 July 2021 (redacted)**
- **Appendix B: Approved Summary of Interview – (Complainant).**
- **Appendix C: Email dated 20 November 2020 – Complainant to Person A**
- **Appendix D: Email dated 9 December 2020 – Complainant to Councillor Martin (Subject Member) cc to Person A**
- **Appendix E: Email dated 9 December 2020 – Subject Member to Complainant in response to Appendix D.**
- **Appendix F: Approved Summary of Interview 1 with Person A.**
- **Appendix G: Email dated 27 October 2022 – Person A to the IO.**
- **Appendix H: Email dated 6 August 2020 (16.17)**
- **Appendix I: Email dated 4 November 2020 (23.34)**
- **Appendix J: Email dated 4 November 2020 (23.37)**
- **Appendix K: Approved Summary of Interview 2 – Person A**
- **Appendix L: Extract of email dated 2 March 2023 – Person A to IO.**
- **Appendix M: LGA Guidance dated July 2021.**

SCHEDULE OF UNUSED MATERIAL

- **Extract of Councillor Martin's Facebook page.**