

**TITLE OF REPORT: ITEM REFERRED FROM STANDARDS SUB-COMMITTEE: 24-26 FEBRUARY 2016 AND STANDARDS COMMITTEE CONSIDERATION: 12 OCTOBER 2016 – FORMER COUNCILLOR DAVID LEAL-BENNETT**

*The following is an extract from the Standards Sub-Committee meeting held 24 February - 26 February 2016.*

**6. COMPLAINT OF FAILURE TO OBSERVE THE CODE OF CONDUCT – DETERMINATION OF STANDARDS COMPLAINT (Cllr Leal-Bennett)**

**The Sub-Committee retired to deliberate and to determine its decisions.**

Decisions

Upon returning, the Chairman advised that the Sub-Committee had disregarded evidence where it was aware that Councillor Leal-Bennett was acting as a Director/Trustee of HTH Ltd and not as a councillor. Accordingly, the Sub-Committee had agreed the following resolutions, which summarised the findings and reasons for those findings.

**RESOLVED:** That, having considered the evidence, the representations and consultation with the Independent Person:

- (1) in respect of the allegation that Councillor Leal-Bennett had failed to show respect, contrary to Paragraph 3.2 (b) of the NHDC Code of Conduct "You must show respect and consideration for others", the allegation was upheld.

Reasons:

There were various examples of breaches that the Sub-Committee found showed a lack of respect and consideration for others including, for example:

Howard Crompton evidence. Questioning of junior staff. Pages 315-316. "He then asked one junior member of staff what one thing could be done to improve the service." "He upset a number of the IT team by his visit." "I found this very difficult [external control of website] as he would not accept the situation and seemed bent on holding me responsible for something over which I had no control."

Page 297, Katie White testimony: "He also behaves very badly when contractors are present.... The contractor was disgusted with the way in which Cllr Leal-Bennett behaved and e-mailed a Senior Officer accordingly." [Groundworks Bancroft Gardens meeting.]

- (2) in respect of the allegation that Councillor Leal-Bennett had bullied and harassed Officers contrary to Paragraph 3.2 (c) of the NHDC Code of Conduct "You must not use bullying behaviour or harass any person", the allegation was upheld.

Reasons:

The Sub-Committee considered that what Councillor Leal-Bennett believed was being "direct" was bullying and harassment to others. Examples included:

Katie White Law Society threat. Page 169 "I ... will be writing to the Law Society to make a formal complaint."

Page 271: Meeting of David Scholes (DS) and David Leal-Bennett (DLB). "DLB said that he was going to get District Audit to look at this project. [Hitchin Town Hall]"

"DLB said that he was furious at the sequence of events on Thursday [exclusion from Full Council meeting]." "DLB said that he would not 'lie down' over this and if DS thought that this was DLB being angry then he hadn't seen anything yet."

Page 290 DS statement: "He behaves in what to my mind is a rude and bullying way to more junior staff, behaving in a way that shows a complete lack of respect for them and their jobs and abusing his position. ... I have had to repeatedly ask him to moderate his behaviour but disappointingly it has had little effect. Both in person and in correspondence he behaves in an unpleasant and rude manner."

- (3) in respect of the allegation that Councillor Leal-Bennett had compromised the impartiality of officers or those working on behalf of the Council contrary to Paragraph 3.2 (d) of the NHDC Code of Conduct "You must not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the authority", the allegation was not upheld.

Reason:

The Sub-Committee found no evidence to support that he did this whilst acting as a Councillor.

- (4) in respect of the allegation that Councillor Leal-Bennett had brought his office or the reputation of the Council into disrepute contrary to Paragraph 3.4(a) of the NHDC Code of Conduct "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute", the allegation was upheld.

Reasons:

The Sub-Committee found that there were a number of examples where Cllr Leal-Bennett had made statements to the press, or used his Twitter account to criticise Members and Officers bringing the reputation of the Council into disrepute, for example:

Page 97. [Comet article, 16 February 2015] DLB speaking as Chair of NHDC Hitchin Area Committee. "I am appalled at the action of the Chair of NHDC who decided, with questionable advice from officers, that I should not attend the Full Council meeting last week."

Page 279 "Mr Leal-Bennett added 'Unfortunately we have leadership that does not support a democratic process nor will it sit down to discuss the real issues.'

Page 305 Point 23: Anthony Roche: "Cllr. Leal-Bennett used his Twitter account to publicly criticise me and the chairman." DLB tweeted: "The Monitoring Officer has been previously chastised by a Government Minister and Peter Lilley for poor interpretation of the rules."

- (5) in respect of the allegation that Councillor Leal-Bennett had acted contrary to Paragraph 3.4(b) of the NHDC Code of Conduct "You must not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, the authority", the allegation was not upheld.

Reason:

The Sub-Committee found no evidence to support that he did this whilst acting as a Councillor.

- (6) in respect of the allegation that Councillor Leal-Bennett had failed to comply with an investigation conducted by the Monitoring Officer contrary to Paragraph 3.4(c) of the NHDC Code of Conduct "You must comply with any request of the authority's Monitoring Officer or Section 151 Officer, in connection with an investigation conducted in accordance with their respective statutory powers", the allegation was upheld.

Reasons:

Cllr Leal-Bennett had acknowledged at the hearing that he had not co-operated with the investigation. He had, however, publicly apologised for failing to make himself available for interview by the Investigating Officer.

- (7) in respect of the allegation that Councillor Leal-Bennett had used his position to seek to influence progression of the Hitchin Town Hall Project to the advantage of Hitchin Town Hall Limited, where he was a Director, which involved the lobbying of Officers and Members to seek to exert influence and the use of Council resources contrary to Paragraph 3.5 of the NHDC Code of Conduct, the allegation was not upheld.

Reason:

The Sub-Committee found no evidence to support that he did this whilst acting as a Councillor.

- (8) in respect of the allegation that Councillor Leal-Bennett had failed to have due regard to relevant advice provided by the Council's Monitoring Officer and Head of Paid Service contrary to Paragraph 3.6 of the NHDC Code of Conduct "You must: (a) when participating in meetings or reaching decisions regarding the business of the authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by the authority's officers, in particular by— (i) the authority's head of paid service; (ii) the authority's s.151 officer/ chief finance officer; (iii) the authority's monitoring officer/chief legal officer", the allegation was not upheld.

Reason:

The Sub-Committee considered that, although Councillor Leal-Bennett had chosen not to follow the advice of the Monitoring Officer, he did in fact have "due regard" for it.

- (9) in respect of the allegation that Councillor Leal-Bennett had failed to comply with the Member/Officer Protocol, a breach of 3.7(c) of the NHDC Code of Conduct, the allegation was upheld.

Reasons:

By his actions Cllr Leal-Bennett had failed to understand and support the roles of officers, or shown respect for senior officers, subjecting them to undue public criticism. Examples included:

Page 289 (DS) "His attitude in particular towards the Monitoring Officers has been most regrettable, especially considering their role in relation to trying to ensure that the Council conducts its business properly. He has been publicly and frequently very critical of Anthony Roche in the way he has conducted his legal role."

Identifying Anthony Roche to Peter Lilley.

Criticism of Monitoring Officer identifies Mr Roche personally.

Sanctions

Upon returning, the Chairman advised that the Sub-Committee had agreed the following resolutions.

**RESOLVED:**

- (1) That the Sub-Committee's findings in respect of Councillor Leal-Bennett's conduct be published;
- (2) That the Sub-Committee's findings be reported to Council for information; and
- (3) That Council be recommended to issue Councillor Leal-Bennett with a formal censure or reprimand.

Reasons:

The Sub-Committee had taken account that of the 5 breaches upheld there were a number of serious breaches in relation to failure to show respect, bullying and bringing his office and the reputation of the

Council into disrepute. The Sub-Committee concluded that these were sufficiently serious to warrant a potential censure or reprimand by Council.

The Sub-Committee accepted that, whilst Cllr Leal-Bennett had failed to co-operate with the investigation, he had apologised for failing to do so at the hearing. The further breach of failing to following the Member/ Officer Protocol also covered some of the breaches already outlined.

The Sub-Committee did not consider that a referral to training would assist, but hoped that Councillor Leal-Bennett would take note of how others related to him and perceived his behaviour.

The Sub-Committee added that they considered Cllr Leal-Bennett to be a very good Councillor for Hitchin who was dedicated to the residents of Hitchin.

*The full Minutes of the final determination hearing are attached (Appendix A), as is the full Decision Notice (Appendix B).*

**The issue was further reported to Standards Committee on 12 October 2016. The following is an extract from the Minutes of that Standards Committee meeting:**

## **6. STANDARDS MATTERS**

### Sub-Committee Hearing

Paragraphs 8.3 and 8.4 of the report gave a brief outline of the Sub-Committee hearing held in February 2016.

The current situation regarding this complaint was that the External Deputy Monitoring Officer, in consultation with the Independent Person made the decision that the appeal could not proceed. The consideration regarding this had been whether, under the Localism Act procedures, it was possible to proceed when it related to someone who was no longer a councillor and they concluded that the appeal could not proceed.

The Monitoring Officer advised that, as a witness at the hearing, he had taken no part in the decision making process regarding the appeal.

The usual time period for challenging that decision by Judicial Review had expired. Two of the resolutions in the sub-Committee's findings remained relevant. Firstly to report to Council on what had taken place and the second was a recommendation for a motion of censure.

Given that there was no appeal, these two items would be reported to Council in November and it would be for Council to decide how to proceed.

Members expressed concern that, with this situation, the internal appeal mechanism was not available, yet the recommended sanction could remain in place and alternatively that, if the recommended sanction was not actioned, or held on file, the person concerned could be re-elected and the slate having been wiped clean. They asked for further clarification regarding this.

The Monitoring Officer advised that this was for Council to decide and that one of the options decided could be to take no further action, but the current recommendations made by the Standards Sub-Committee had to be considered. If the Council decided to censure, that would be on the basis of it relating to a former Councillor and their behaviour whilst in office. The alternative could be that they decide that, due to the loss of office, that was the end of the matter.

The Deputy Monitoring Officer clarified that, in this specific case, a letter stating that Mr Leal-Bennett wished to appeal had been received by the external Deputy Monitoring Officer during the run up to the election. The external Monitoring Deputy Officer agreed to hold this in abeyance until after the election. Subsequent to the election, during which he lost his seat, Mr Leal-Bennett indicated that he wished to continue with the appeal. This request was considered by the external Deputy Monitoring Officer and the Independent Person and they concluded that there was no avenue for him to take that process forward. This was communicated to Mr Leal-Bennett in writing.

The Chairman advised that, although the internal appeals process was no longer available, there had been external methods of appeal available including the Local Government Ombudsman and Judicial Review, but these options had not been taken up by the individual within the timescales allowed.

The Monitoring Officer confirmed that he had not taken up the external options of appeal and, in the normal course of events, he was beyond the period for bringing such a challenge.

Members acknowledged the difficulty of the current position regarding this matter and noted that the unusual situation regarding the inability to appeal the decision internally was caused by this not being specifically in the existing procedure.

The Monitoring Officer advised that he was aware of the difficulty regarding this situation and gave an example of a complaint made against a Parish Councillor who resigned and almost immediately either stood again for election or was co-opted onto the Parish Council. The complaint ceased due to the resignation and therefore it could be viewed that they had played the system to avoid justice. Ways to address this problem would be considered in the next item.

They queried whether this Committee could, should they so wish, make a different recommendation to Council than that made by the Sub-Committee.

The Monitoring Officer advised that technically, as the parent Committee they could make a recommendation, but that the Sub-Committee had made their recommendations based on three days of hearings. The current situation was down to quirk of timing in being able to report the matter to Council, which could not be reported prior to the election as an appeal had been submitted.

Members acknowledged that, whatever the decision of Council regarding censure, the events had been reported in the press and therefore the individual had been affected.

The Monitoring Officer reminded Members that the findings against the Councillor included his behaviour towards staff and the very public criticism of Members and Officers, which had continued at this meeting, and that consideration had to be given to the message that the Council wished to give about how it views that behaviour.

A Member asked whether it was likely that a legal challenge would be made, and if it were, how much this might cost the Council.

The Monitoring Officer advised that he did not know whether or not a legal challenge would be made but in any event legal challenges were not cheap.

**They wished to make sure that Council were fully aware of all of the options available to them and asked that these be made clearing the report submitted to Council for consideration.**

*The full Minutes of the Standards Committee meeting are attached (Appendix C).*

### **Options available to the Council:**

#### **No further action**

Members will be aware David Leal-Bennett is no longer a District Councillor, having lost his seat at the May 2016 elections. Full Council may wish to decide not to censure the former Councillor, due to the passage of time, the loss of his seat and as he was not allowed to pursue the appeal he had lodged prior to the election.

#### **Motion of censure as recommended by the Standards Sub-Committee**

If Council proceeds with censure, it will be of a former councillor as a result of his actions whilst a Councillor and is not a censure of a private individual.