

**NORTH HERTFORDSHIRE DISTRICT COUNCIL**

**STANDARDS COMMITTEE**

**MINUTES**

**Meeting held at the Council Offices, Gernon Road, Letchworth Garden City  
on Wednesday, 12 October 2016 at 7.30p.m.**

**PRESENT:** *District Councillors Mike Rice (Chairman), Alan Millard (Vice-Chairman), Judi Billing, Julian Cunningham, Bernard Lovewell, Ian Mantle, Frank Radcliffe and Terry Tyler.  
Parish Councillors Helena Gregory (Co-opted non-voting Parish Council Representative)  
Mr Peter Chapman (Reserve Independent Person) – non-voting advisory role.*

**IN ATTENDANCE:** *Corporate Legal Manager (Monitoring Officer), Senior Lawyer (Deputy Monitoring Officer) and Committee and Member Services Officer.*

**ALSO PRESENT:** *Four members of the public.*

**1. APOLOGIES FOR ABSENCE**

Apologies for absence were submitted on behalf of District Councillors Jane Gray, Steve Hemingway and David Levett and Parish Councillor Robert Logan and Mr Nicholas Moss (Independent Person).

**2. MINUTES**

Parish Councillor Helena Gregory advised that her attendance at the last meeting, held on 31 March 2016, had been recorded using the incorrect name of Nicola Gregory.

The Chairman and the Committee Clerk apologised for this error.

**RESOLVED:** That, subject to the name in the attendance list being amended from Nicola Gregory to Helena Gregory, the Minutes of the meeting of the Committee held on 31 March 2016 be approved as a true record of the proceedings and signed by the Chairman.

**3. NOTIFICATION OF OTHER BUSINESS**

No other items were presented for consideration.

**4. CHAIRMAN'S ANNOUNCEMENTS**

- (1) The Chairman welcomed everyone to the meeting, particularly those new Members of the Committee;
- (2) The Chairman reminded Member that, in line with Council Policy, the meeting was being recorded and requested that people announce their name prior to speaking;
- (3) The Chairman reminded Members that, in line with the Code of Conduct, any Declarations of Interest should be declared immediately prior to the item in question.

**5. PUBLIC PARTICIPATION**

Mr David Leal-Bennett

Mr Leal-Bennett thanked the Chairman for the opportunity to address the Committee and advised that he wished to address the Committee concerning the disciplinary hearing heard earlier this year.

He stated that he had appealed the decision of the Standards Sub-Committee within the prescribed time frame and that this had been communicated directly to the substitute Monitoring Officer, Gavin Miles from Broxbourne who was in charge of the case.

He asserted that he did not wish any officer from NHDC to see the document as this appeal was highly confidential however if Members had not received a copy he would rectify that and let Councillor Rice and Councillor Hemingway have a copy, on the understanding that it would not be passed and copied to any other individual without his consent.

In view of what was said at that hearing, Mr Leal-Bennett felt that he had no option other than to challenge those counts on which he was found guilty. He was currently preparing a detailed letter for the Information Commission's Office and had a letter ready for dispatch to the QC's used by NHDC and was collating information to support an appeal.

Mr Leal-Bennett stated that the disciplinary hearing which he was subjected to was an expensive exercise that had cost NHDC over £100,000 including Officer time. Over £55,000 had been paid on external legal costs. This was a complete waste of tax payers' money, since the Independent Person, Nicholas Moss, had attempted to resolve the dispute, but your Chief Executive refused to meet, it was clearly not acceptable to the Senior Officers at NHDC who persisted in using tax payers' money in an attempt to prove a point.

Those same Senior Officers lied and fed the Sub-Committee with misinformation and did everything in their power to discredit him. It was extremely serious when the former Head of NHDC Legal Services made claims that were later proved, by the statements of other individuals, to be a fabrication and untrue and this needed to be investigated. He stated that he expected nothing less than a full apology from NHDC concerning this particular point.

Even after the hearing, when he had absolutely no interest, he was barred from taking part in meetings, in spite of the full support of his Member of Parliament, The Rt Hon Peter Lilley, the Conservative Councillors Association and the Minister, The Rt Hon Eric Pickles, but still officers insisted that he take no part.

Mr Leal-Bennett stated that he had been advised that, because he was no longer a councillor, there was no point in having an appeal. If this was the case then it was a disgraceful situation since he wished to clear his name. He questioned what would happen if he were re-elected and asserted that he wished to continue with this appeal at his convenience, once he had prepared his case.

He advised that he had been a councillor for four years and that, in his opinion, there was a culture within NHDC that totally followed process, without any common sense prevailing. This culture had produced an organisation that did not serve the electorate, wasted money and frankly was not fit for purpose and called on those in charge, namely the Chief Executive, Mr Scholes, and the Leader of the Council, Mrs Needham, to resign.

Members queried the purpose of Mr Leal-Bennett's presentation, particularly as some of the information would appear to be confidential.

Mr Leal-Bennett advised that the information was not too confidential for the Chairman or the Vice-Chairman, but was not to be seen by Officers of the Council as it included information about individuals within North Herts, which was sensitive. The reciprocal arrangements meant that the appeal should not be carried out within North Herts.

He re-iterated that he had linked the appeal with the culture that caused spending of a large amount of taxpayers' money on something that could have been resolved very simply by two sides saying I'm sorry and that it was time for those in charge to go.

The Chairman thanked Mr Leal-Bennett for his presentation.

## **6. STANDARDS MATTERS**

The Monitoring Officer presented a report in respect of standards issues generally. The following appendices were submitted with the report:

Appendix A – Committee for Standards in Public Life (CSPL) Annual Report 2015-16; and  
Appendix B – Planning Code of Good Practice.

He explained that this was the general update on Standards issues and drew attention to the following:

### Complaints Update

Paragraph 8.2 of the report gave brief details of the complaints considered since the last meeting of this Committee.

### 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.

#### Committee on Standards in Public Life Annual Report

Paragraphs 8.5 – 8.10 of the report gave brief details of the CSPL Annual Report

The report recognised the positive input of the Independent Person role, including the ability to assess at an early stage, whether there is a case to answer or not resulting in much quicker resolutions to complaints without foundation.

There continued to be questions around the sanctions available and the National situation continued to be monitored.

#### Planning Code of Good Practice

The Planning Code of Good Practice was attached as Appendix B to the report. Members were asked what, if any, changes they would like to see to the document given that Full Council had asked the Standards Committee to review it.

Members asked for clarification regarding the advice contained in the document that Councillors not talk to applicants or developers about the procedures or processes regarding planning applications as it was felt that Members could talk about the process without expressing a view about the outcome of a particular application.

The Monitoring Officer advised that the concern was where a conversation about process turns into a conversation about the merits of an application, but the wording could be changed to make it sufficiently clear what could be discussed.

#### Guidance for Members on Outside Bodies

A document had been produced giving guidance to those Members on Outside Bodies, which included advice about potential conflicts of interest; this had been circulated in Members Information Service.

The Deputy Monitoring Officer was currently reviewing the nominations to Outside Bodies and looking at issues such as insurance cover. A report would be produced for Member consideration once this work was concluded.

#### **RESOLVED:**

- (1) That the contents of the report be noted;
- (2) That, in respect of the report due to be presented to Council regarding the Complaint against a Councillor, the Monitoring Officer be requested to ensure that all available options are made clear to Council;

- (3) That, in respect of the Planning Code of Good Practice, the Monitoring Officer be requested to make minor amendments to the wording of Section 4 to make it sufficiently clear that explanation of the procedure could be discussed;
- (4) That, subject to (3) above and the correction of typographical errors, the Planning Code of Good Practice be supported.

**REASON FOR DECISION:** To ensure good governance within the Council.

## **7. COMPLAINTS HANDLING PROCEDURE AND DETAILED GUIDE ON THE NHDC CODE OF CONDUCT**

The Deputy Monitoring Officer submitted a report in respect of potential changes to the Complaints handling arrangements and a new Guide to the NHDC Code of Conduct. The following appendices were submitted with the report:

Appendix A – Complaints handling procedure relating to Councillors’ Code of Conduct (amendments shown as tracked changes);  
Appendix B – “Clean” version of Appendix A with amendments accepted; and  
Appendix C – NHDC Code of Conduct – detailed Guide.

### Complaints Handling Procedure

The Deputy Monitoring Officer reminded Members that the Complaint Handling arrangements had been introduced in 2012, following the introduction of the Localism Act and were last updated in 2015.

The procedure was based on a model used locally, but this Council had chosen to include an internal appeals process. It was always the intention to undertake a review following use of the whole procedure.

The proposed changes were informed by previous use of the procedure when handling different types of complaint and experiences generally in dealing with complaints for NHDC, EHDC and Parish Councils and two main changes were recommended as follows:

#### *What happens when a Councillor resigns or loses their seat*

The proposed changes would close a gap in the procedure which has been identified as a result of the experiences when dealing with Parish Council complaints as well as the experiences discussed earlier in the agenda.

Paragraph 5.14 of the procedure detailed the proposal that a complaints process could be suspended if the individual was no longer a Councillor and that the complaints procedure could subsequently, following a decision by the Monitoring Officer and Independent Person, be recommenced if the person being complained about served on the Council again within a particular timescale. This was particularly important for Parish Council complaints, which could include issues regarding behaviours towards staff. The suggested time period was 14 months.

#### *Removal of the Internal Appeals Process*

The Deputy Monitoring Officer advised that the original procedure did not include an internal appeals process within it. Other Authorities in the local area had not included an appeals process in their procedures, it was not recommended practice and the pre Localism Act procedures had not included an appeals process.

The current process, requested by Members, meant that, if a hearing decision was appealed, the whole process would have to be undertaken again which was inefficient and elongated the process for everyone concerned.

There were external appeals processes available through the Local Government Ombudsman or Judicial Review.

The Chairman advised that he had met with the Legal Department and the Independent Person to discuss this issue during which they noted that appeals against Licensing or Planning decisions were undertaken by external agencies. He therefore fully supported the removal of the internal appeals process, as the external avenues available were fair.

Members were generally supportive of the removal of the internal appeal process but were concerned that there should be a limit on the period during which an external appeal could be lodged. They also noted that it was possible for late evidence to be submitted, which could draw out the process.

The Monitoring Officer confirmed that the external avenues of appeal had their own timescales. In respect of late evidence, he stated that he could not envisage a scenario where this would be an issue and there were proposals in the new process that tried to ensure that information was gathered well in advance of any hearing so that the Sub-Committee had all the information it needed.

The Deputy Monitoring Officer advised that steps had been taken to ensure that the pre hearing process was as efficient and detailed as it could be including having timescales for evidence submission and a case conference to discuss administration issues with the Independent Person. This initial stage was very detailed and gave opportunities for all sides to submit evidence over a reasonable period of time and in most cases people were co-operative with the process.

Members expressed concern that the wording at paragraph 8.3g be amended to make it clear that it was the internal appeals process that was being removed and that external avenues of appeal remained open.

There was a brief debate regarding the costs associated with any investigation and or subsequent hearing and that delays in the process added to these costs.

The Monitoring Officer agreed that delays did increase costs and that the time limits for submitting evidence and that the investigation should take would help with this as well as inform all concerned of the likely timings of each stage of the process

#### NHDC Code of Conduct Guidance

The Deputy Monitoring Officer informed Members that the purpose of the guidance was to assist Members when looking at the Code of conduct both for their own use or as part of a Standards Sub-Committee and Officers and the Independent Persons when they are considering complaints. This did not prevent Members from asking for advice from the Legal Department at any time. The intention was to review the document on an annual basis.

Members were impressed with the document and noted that many questions that were asked on a regular basis could be answered by referring to it.

#### **RESOLVED:**

- (1) That the Monitoring Officer be requested to amend the wording in the Procedure in order to make clear that external avenues of appeal remained available;
- (2) That, subject to (1) above and minor amendments, including correction of typographical errors, the Complaints handling procedure relating to Councillors' Code of Conduct, as attached at Appendix B to the report, be approved:
- (3) That, subject to amendments, including correction of typographical errors, the NHDC Councillors' Code of Conduct Guide, as attached at Appendix C to the report, be approved.

**REASON FOR DECISION:** To ensure good governance within the Council.

The meeting closed at 8.48 pm.

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Chairman