

DECISION NOTICE
North Hertfordshire District Council
Standards Sub-Committee Hearing Sub-Committee

Authority:
North Hertfordshire District Council ('NHDC').
Subject Member:
Cllr David Leal-Bennett.
Complainant(s):
Mr David Scholes. Mrs Patricia Cowley.
Sub-Committee Members and Independent Person at the Hearing:
<u>District Council Members:</u> Cllr Mike Rice (Chairman). Cllr Alan Millard. Cllr Steve Hemingway.
<u>Independent Person:</u> Mr Nicolas Moss.
Monitoring Officer:
Mr Gavin Miles (acting) external Deputy Monitoring Officer. (Monitoring Officer for Broxbourne Borough Council)
Investigator who investigated the matter:
Ms Olwen Dutton, Partner Bevan Brittan LLP.
Legal advisor to the Sub-Committee
Ms Jeanette Thompson, Acting Senior Lawyer and Deputy Monitoring Officer.
Clerk of the Hearing or other administrative officer:
Mr Ian Gourlay Committee & Member Services Manager.
The date of the Hearing:
24-26 February 2016.
Summary of the complaint:
The complaints are set out in the Complaint of David Scholes and Mrs Patricia Cowley, as further outlined in the reports and witness statements pages 1-497.
The relevant sections of the NHDC Code of Conduct:
3.2 (b), (c) and (d); 3.4 (a), (b), and (c); 3.5; 3.6; and 3.7(c).
A summary of the evidence and documents considered and representations made:
The Investigator's Report, Appendices One - Six, Supplemental Report and Appendix A (pages 1-497 & Viii-Xiii). Representations made by the Investigator at the hearing. Cllr Leal-Bennett's witness evidence, numbered 1-23 and exhibits (pages 500-1107); Representations and further oral evidence by Cllr Leal-Bennett and Mr Charles Bunker. Further oral evidence provided by Cllr Leal-Bennett's witnesses on the complaints - Mr Stephen Pike; Mr Brent Smith; Cllr Claire Strong and Cllr John Harris. Additional documents circulated/tabled at the hearing: Cllr Leal-Bennett's "DPI – Timeline" document (two pages).

Documents from the original complaint – 3.4 (1) File note 24.9.13; (2) email Cllr Leal-Bennett – Cllr Levett & oths 21 February 2014; (3) email Mr Scholes – Cllr Leal-Bennett 4.3.14; (4) email Ms Dobor – Mr Scholes & oths 5.1.15 (Michael Havis press comments); (5A-D) Hitchin Town Hall letter Cllr Leal-Bennett Mercury 21.1.15; (5B) Cllr Leal-Bennett press Mercury Midweek 7.1.15; (5C) Town Hall Trust –Cllr Leal Bennett Midweek Mercury 4.2.15, Mediation plan Town Hall and press comment by Cllr Leal-Bennett 16.2.15; (5D) email Michael Harris – Nicola Lennox & oths 16.2.15.
Email Mr Robinson – Mr Scholes re Bancroft Gardens consultation complaint 7.10.15;
email Mr Scholes – Cllr Leal-Bennett Hitchin Town Hall 25.2.14.

Decision on the alleged breaches:

The Sub-Committee having considered the evidence, the representations and the public consultation with the Independent Person came to the following decision.

Alleged breach:

Cllr Leal-Bennett failed to show respect, contrary to paragraph 3.2(b) of the NHDC Code of Conduct

"You must (b) show respect and consideration for others;"

Finding:

Upheld.

Reasons:

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

- In Howard Crompton evidence, and questioning of junior staff at pages 315 and 316 of the bundle:

"He started to ask the staff in the department what they did and made comments about what they did...made staff feel very uncomfortable.. security arrangements "irrelevant"...IT staff felt uncomfortable and uneasy.."

"He then asked one junior member of staff what one thing could be done to improve the service and the officer said to have more staff. Cllr Leal-Bennett responded that this was not the answer he was looking for"

"He upset a number of the IT team by his visit."

"I also had dealings with him when he raised issues about the Council's website and I tried to sort it out by explaining to him the way that matters work, and the fact that some pages are maintained by an external company on behalf of Democratic Services and the IT team in the Council have no access and cannot make any changes. I found this very difficult as he would not accept the situation and seemed bent on holding me responsible for something over which I had no control."

- In Katie White's testimony at page 297:

"He also behaves very badly when contractors are present. .. a meeting about Bancroft Gardens ..The contractor was disgusted with the way in which Cllr Leal-Bennett behaved and emailed a Senior Officer accordingly. "

Gill Taylor Groundworks' email "Cllr Leal-Bennett was one of the very vocal detractors at the session.. came to the display to ask questions and when I started to try to answer he interrupted me and was pretty negative and quite aggressive in front of members of the

public which I did feel was inappropriate.."

Alleged breach:

Cllr Leal-Bennett bullied and harassed Officers contrary to paragraph 3.2(c) of the NHDC Code of Conduct

"You must (c) not use bullying behaviour or harass any person;"

Finding:

Upheld

Reasons:

This, the Sub-Committee found, was a problem of perception. What Councillor Leal-Bennett believed was being "direct" was bullying and harassment to others.

This was such things as the use of threats to report officers to the Law Society or the Auditors or being furious with responses or advice provided.

For example:

- In relation to Katie White after a letter was sent to Cllr Leal-Bennett by her at page.169 "*I ... will be writing to the Law Society to make a formal complaint.*" [about her]
- At a meeting between David Scholes and Cllr Leal-Bennett on 16 February 15 (at page 271 "*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....DLB said that he was going to get District Audit in to look at this project. [Hitchin Town Hall].. DLB said that whoever was in charge (DS/AR/JR) should be dismissed or at the very least put on gardening leave.*"
- At page 290 of David Scholes' 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.*"

Alleged breach:

Cllr Leal-Bennett actions 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 (d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, the authority."

Finding:

Not upheld

Reasons:

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

Alleged breach:

Cllr Leal-Bennett brought his Office or the reputation of the Council into disrepute contrary to paragraph 3.4(a)

"You must (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or the authority into disrepute;"

Findings:

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:

- At page 97 the Comet article dated 16 Feb 15, when Cllr Leal-Bennett was 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."*
- The Midweek Mercury article 7 January 15 at 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.'"*
- At Page 305 paragraph 23 of Anthony Roche's statement: *"Cllr. Leal-Bennett used his Twitter account to publicly criticise myself and the chairman." Cllr Leal-Bennett tweeted: "The Monitoring Officer has been previously chastised by a Government Minister and Peter Lilley for poor interpretation of the rules... he also tweeted on the same day "the behaviour of the chairman of NHDC at full Council last night was appalling and totally undemocratic".*

Alleged breach:

Cllr Leal-Bennett acted contrary to paragraph 3.4 (b)

"You must (b) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, the authority."

Finding:

Not upheld

Reasons:

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

Alleged breach:

Cllr Leal-Bennett has failed to comply with an investigation conducted by the Monitoring officer contrary to 3.4(c) of the NHDC Code of Conduct.

"You must: (c) 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."

Findings:

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.

Alleged breach:

Cllr Leal-Bennett has used his position to seek to influence the progression of the Hitchin Town Hall Project to the advantage of Hitchin Town Hall Limited, where he was a Director. This 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.

Finding:

Not upheld

Reasons:

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

Alleged breach:

Cllr Leal-Bennett 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;

Findings

Not Upheld.

Reasons:

We consider that, although Cllr Leal-Bennett chose not to follow advice of the Monitoring Officer, he did in fact have 'due regard' for it.

Alleged breach:

Cllr Leal-Bennett failed to comply with the Member Officer Protocol 3.2, a breach of 3.7(c) of the NHDC Code of Conduct.

Findings:

Upheld.

Reasons:

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

For example:

- In the statement of David Scholes at page 289 Mr. Scholes states: *"I am very concerned about the way in which Cllr Leal-Bennett deals with members of staff at all levels. His attitude in particular towards the Monitoring Officer(s) 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."*
- He passed information to Peter Lilley MP identifying Anthony Roche which led to criticism of Anthony Roche in the Westminster Great Hall Debate, even though the advice provided before the debate had changed as identified by David Scholes at page 290 of his statement. Cllr Leal Bennett has referred to that instance of what he terms "incorrect" advice from the Monitoring Officer on numerous occasions and his public criticism has identified Anthony Roche personally on a number of occasions.

The Sub-Committee accepted that Peter Lilley had originally identified Mr. Roche personally, but found that Cllr Leal-Bennett had provided the information in the first place and had continued to make critical statements relating to this, identifying Mr. Roche in breach of the Protocol.

The sanctions imposed, if any, including the reasons for any sanctions:

Following representations from the Investigator, Cllr Leal-Bennett and further public consultation with the Independent Person, the Sub-Committee came to the following decision (as per paragraph 9 of the Complaints Procedure and Appendix 4 of the Standards Sub-Committee Hearing Procedure).

Sanction:

- Publish its findings in respect of the member's conduct (9.1.1);
- Report its findings to Council for information (9.1.2); and
- Recommend to Council that Cllr Leal-Bennett be issued with a formal censure or be reprimanded (9.1.3).

Reasons:

The Sub-Committee took 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 Cllr Leal-Bennett would take note of how others relate to him and perceive 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.

Date of Decision Notice: 2 March 2016

Right of appeal:

The Member has a right to Appeal against the finding, or against any sanction imposed, or both. Such appeal will be heard by a further meeting of the Standards Sub-Committee comprising a panel of Members and an Independent Person not involved in the initial Sub-Committee hearing.

A Member wishing to exercise this right of appeal must write to the Monitoring Officer within **21 days of the date of despatch of the Decision Notice** of the Standards Sub-Committee confirming that the Member is exercising his/her right of appeal and the grounds for that appeal (as per 13.4 of the Complaints procedure). **This should be received by Mr Gavin Miles, external Deputy Monitoring Officer by 5pm 23 March 2016).**



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Cllr Mike Rice
Chairman of the Sub-Committee