

## STANDARDS SUB-COMMITTEE - 24, 25 & 26 FEBRUARY 2016

\*PART 1 – PUBLIC DOCUMENT

AGENDA ITEM No.

**5**

### **TITLE OF REPORT: HEARING AND DETERMINATION OF COMPLAINT OF FAILURE TO OBSERVE THE CODE OF CONDUCT: COUNCILLOR DAVID LEAL-BENNETT**

AUTHOR: Acting (external) Deputy Monitoring Officer – Gavin Miles (Broxbourne Borough Council).

#### **1. SUMMARY**

- 1.1 To receive the external Investigator's reports into allegations and hear the complaints against Councillor Leal-Bennett in accordance with the Council's Code of Conduct Complaints Procedure; and
- 1.2 To reach a decision on the complaints in accordance with paragraph 7 of the Standards Sub-Committee Hearing Procedure.

#### **2. RECOMMENDATIONS**

That the Hearings Sub-Committee:

- 2.1 undertake the hearing of the complaints against Councillor Leal-Bennett and (having consulted the Independent Person) determines whether, on the balance of probabilities a breach or breaches of the Councillors' Code of Conduct has occurred;

*And if such a breach or breaches is/are found to have occurred*

- 2.2 determines what sanction is appropriate (having consulted the Independent Person).

#### **3. REASONS FOR RECOMMENDATIONS**

- 3.1 To comply with the legislative requirements<sup>1</sup> to deal with such complaints under arrangements adopted by the Council.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

- 4.1 In a situation where the Investigator's report concludes that there is evidence of failure to comply with the Code of Conduct, the Monitoring Officer may (under 8.1.1 of the Procedure) consider whether such matters can be resolved informally without the need for a hearing.
- 4.2 The Acting external Deputy Monitoring Officer did not consider this to be appropriate and therefore the Investigation Report has been referred to Standards Sub-Committee for consideration and determination of the complaints.

<sup>1</sup> Section 28(4),(6) Localism Act 2011.

**5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS**

5.1 Consultation has taken place with the Independent Person on the initial referral of the complaint for investigation and for listing the hearing. The Independent Person attended the meeting of 2 December 2015.

**6. FORWARD PLAN**

6.1 Not applicable.

**7. BACKGROUND**

7.1 On or about 9 February and 23 February 2015 written complaints were made by the Chief Executive and the then Chairman of Council, Councillor Patricia Cowley, regarding the conduct of Councillor Leal-Bennett.

7.2 These complaints were immediately referred to the external Deputy Monitoring Officer (Mr. Gavin Miles, Monitoring Officer of Broxbourne Borough Council), under a reciprocal agreement between North Hertfordshire District Council and Broxbourne Borough Council. This referral had been made because NHDC's Acting Monitoring Officer, Mr. Anthony Roche, had provided advice to Cllr David Leal-Bennett on matters linked to the complaints; he was, therefore, a potential witness in the complaint, deemed to have a conflict and unable to leading on the investigation.

7.3 Having considered the complaints and liaised with the NHDC Independent Person (who was sent details of the complaints on 11 March 2015), a decision was made to refer the complaints to a firm of solicitors with particular experience and expertise in this area of work to investigate and report to the Standards Committee. Olwen Dutton, Partner at Bevan Brittan Solicitors (the 'Investigator') was instructed to investigate the complaints.

7.4 The substance of the complaints are summarised in the Investigator's first report, with copies of the complaint forms, reference documents, witness statements and correspondence appended.

7.5 Copies of the complaints were sent to Cllr Leal-Bennett on 27 March 2015. The draft Report and appendices were then sent to Cllr Leal-Bennett for comment on 4 September 2015 and the final Report and appendices (the 'Report') sent to him by the Investigator on 2 October 2015.

7.6 After some considerable exchanges between Cllr Leal-Bennett, his legal representative and the two Deputy Monitoring Officers during October – November 2015 regarding dates for service of Cllr Leal-Bennett's evidence and final dates for a determination hearing by the Sub-Committee (and failure to agree these), it was decided that procedural matters should be resolved by the Sub-Committee.

7.7 A Standards Sub-Committee meeting was held on 2 December 2015 to determine evidential and administrative issues. The Sub-Committee resolved:

(1) That the Sub-Committee hearing be fixed for Wednesday, 24 February 2016, Thursday, 25 February 2016 and Friday, 26 February 2016;

(2) That Cllr Leal-Bennett/his representative serve details of his witnesses by midday on Friday, 4 December 2015;

- (3) That Cllr Leal-Bennett/his representative serve any witness evidence and documents that he intends to rely upon, and identify areas of what evidence or areas of the Investigator's report are disputed by midday on Monday, 4 January 2016;
- (4) That Cllr Leal-Bennett/his representative serve any legal argument they intend to rely upon by midday on Monday, 4 January 2016;
- (5) That the Investigator/external Deputy Monitoring Officer serve any response as to the relevance of Cllr Leal-Bennett evidence and documents to the complaints, and any response to legal argument by midday on Monday, 18 January 2016;
- (6) That all evidence served either as part of the Investigator's Report or in compliance with the resolutions 2.3 to 2.5 to stand as 'evidence in chief' at the Sub-Committee Hearing. That examination of witnesses at the Sub-Committee hearing shall be restricted to the relevant disputed evidence/facts alone related to the complaints;

[Such resolutions do not imply relevance or weight to be given to such evidence];

- (7) That the cover report and appendices bundle be finalised by 22 January 2016. In the absence of agreement between the parties, this shall be delegated to the external Deputy Monitoring/Deputy Monitoring Officers to finalise, in consultation with the Independent Person, if necessary; and
- (8) That the final hearing be held in public, subject to any recommendation that parts of the hearing be held in private session under the provisions of Section 12A of the Local Government Act 1972 following service of the evidence/documents.

7.8 Cllr Leal-Bennett served witness evidence in compliance with resolution 3 (contained in File 2). Members will note that much of the evidence refers to a dispute between the Council and Hitchin Town Hall Limited (HTHL), as well as allegations regarding Officers.

7.9 No legal argument was served by Cllr Leal-Bennett in relation to resolution 4.

7.10 The Investigator served a Supplementary report following the service of Cllr Leal-Bennett's evidence in compliance with resolution 5. This includes further comments from some of the Investigator's witnesses (the Report and Supplementary report and evidence are contained in File 1). At the request of the Investigator such witnesses had a very brief opportunity (from 12-15 January 2016) to consider Cllr Leal-Bennett's evidence and make comments to the Investigator. *As indicated by these witnesses, their comments are not considered to be a detailed analysis or rebuttal of Cllr Leal-Bennett's evidence, given the time afforded to them and relevance to the current proceedings.*

7.11 To assist the Sub-Committee, the Investigator has evaluated the relevance of Cllr Leal-Bennett's witness evidence to the Code of Conduct complaints before this Sub-Committee. *This opinion of the relevance and weight of this evidence is appended at A to this report.*

7.12 Under the local Councillor Complaints Procedure adopted by NHDC, the Investigator will present the reports and call such witnesses as she considers necessary and make

representations to substantiate the conclusions reached that Cllr Leal-Bennett has failed to comply with the Code of Conduct. The witnesses interviewed as part of the investigation are listed on the final page of the Report (and their statements are at Appendix Five).

- 7.13 The Investigator does not (as per Appendix A) intend to ask questions of Cllr Leal-Bennett's witnesses (with the exception of Cllr Leal-Bennett himself). Accordingly witness evidence File 2 Statements 2-23 stand as Cllr Leal-Bennett's evidence – to be considered by the Sub-Committee in accordance with resolution 6. *Witnesses 2-23 are therefore not required to provide oral evidence at the determination hearing.*
- 7.14 NOTE: The Council does not accept any of the evidence in relation to the dispute with HTHL or any allegations relating to Officers made in the witness statements. The procedural fact that the Investigator does not intend to examine/ ask questions of Cllr Leal-Bennett's witnesses relates to the relevance alone to the current proceedings. The Council and relevant Officers reserve the right to rebut such evidence in full in alternative and relevant forums. Officers have indicated their disagreement with many of the comments in the statements submitted by Councillor Leal-Bennett, but because of the need to limit the papers before the sub-committee to those that are relevant to the complaints made, the evidence relating to those comments is not set out.
- 7.15 Cllr Leal-Bennett has disputed all the evidence appended to the Investigator's Report; all such witnesses are available for the hearing (with the exception of Mrs White – who no longer lives in the UK).
- 7.16 Members will see from the Report and the Supplementary report that the Investigator has attempted to interview Cllr Leal-Bennett and offered reasonable opportunities to interview any of his relevant witness to answer these Code of Conduct allegations (between April and July 2015). However, the Investigator was unable to do so (see paragraphs 3.4 -3.5 and Appendix Six of the Report).
- 7.17 In her assessment the Investigator was left with no choice but to proceed in writing the Report without his witness evidence. In that regard the Investigator concluded that there has been a further breach of the Code of Conduct by Cllr Leal-Bennett under paragraph 3.4(c) for failing to co-operate with this investigation.
- 7.18 Members should note, however, that the draft report was forwarded to Councillor Leal-Bennett on 4 September 2015, and he was given an opportunity to comment on the Report and the appendices (including all the witness evidence gathered in the investigation) up until 25 September 2015. There were a number of email exchanges (detailed at 1.5 of the Report) between the Investigator and Cllr Leal-Bennett and after the deadline Cllr Leal-Bennett indicated on 28 September that he wanted the Investigator to interview a number of witnesses and then offered to be interviewed himself. The Investigator declined to re-open the investigation, as set out in the Report (also detailed at 1.5) on the basis that Cllr Leal-Bennett had been offered plenty of opportunity to co-operate before the draft report was provided, and he had chosen not to do so.
- 7.19 Subsequently to these exchanges and the resolution of the Sub-Committee on 2 December, Cllr Leal-Bennett served witness evidence. Members should note that in normal circumstances the Investigator would interview such witnesses, so that there is an opportunity to consider relevance and veracity prior to finalising the Investigator's report. The Investigator has been unable to do so. Having considered the evidence and prepared a Supplementary report and Appendix A, the Investigator is of the opinion

that the evidence produced is not material to the Code of Conduct complaints and remains of the opinion that breaches of the Code of Conduct have taken place.

- 7.20 Members may also consider that whilst Cllr Leal-Bennett served witness evidence on or around 4 January 2016, many of his witnesses appear to have had sight of the full details of the complaints and evidence against him. Witnesses make reference to statements that were “unsigned” and not dated. The Investigator’s Report included signed and dated statements. Under 6.4 of NHDC’s adopted procedure, Cllr Leal-Bennett received the draft report “in confidence”. Disclosure of the draft Report and statements to third parties in contravention of this, is therefore contrary to the Council’s adopted procedure.
- 7.21 This contrasts to information that was made available to the Investigator’s witnesses. Under the adopted procedure the complainants receive a copy of draft reports under 6.4 of the Council’s adopted Complaints Procedure.
- 7.22 Accordingly, whilst it is a matter for Members to determine the relevance and weight of the evidence in relation to the Code of Conduct complaints, Members are advised to take into account the Investigator’s opinion on these issues, as well as any representations from Cllr Leal-Bennett, or his representative (and any of the Independent Person) when doing so and thereafter, considering the matters under 2.1, and (where relevant) 2.2.

## **8. ISSUES**

- 8.1 In summary the issues for determination by the Sub-Committee are:
- 8.1.1 Whether on the balance of probabilities, Cllr Leal-Bennett was acting as a Member at the time of alleged breaches; and if so:
- 8.1.2 Whether, on the balance of probabilities, there has been a breach/ breaches of the Code of Conduct.

The summary of the complaints and alleged breaches are set out in the Investigator’s Report (File 1).

- 8.2 Members are reminded that their remit is to consider those Code of Conduct allegations and not other alleged disputes or allegations against other parties.
- 8.3 In reaching this determination, the Sub-Committee are also reminded to consider the Report, relevant evidence and relevant representations made (either included in the reports, or Hearing bundle or made to the Sub-Committee orally or in writing), any views provided by the Independent Person present at the Hearing (in accordance with section 28(7) of the Localism Act 2011) and any legal advice.
- 8.4 Under the adopted Procedure (and in accordance with 8.3), the Sub-Committee can make one of the following findings:
- 8.4.1 that the Member has not failed to comply with the Code of Conduct and no further action needs to be taken in respect of the matters considered at the Hearing; or
- 8.4.2 That the Member has failed to comply with the Code of Conduct;
- 8.5 *If the Sub-Committee decides that the Member has failed to follow the Code of Conduct*, it will consider any representations from the Investigator and/or the Member (or his representative) and the Independent Person as to whether:

- 8.5.1 any action should be taken or
- 8.5.2 the form of any action, including whether to make any recommendations to the Council with a view to promoting high standards of conduct amongst its Members.

8.6 As per the Standards Sub-Committee Hearings Procedure paragraph 7, the Sub-Committee shall deliberate in private and consider the evidence presented. The Sub-Committee will give reasons for any decision. The decisions on such matters will be announced by the Chairman. The Chairman will confirm that a full written decision shall be issued within 7 working days following the hearing and that the Sub-Committee's minutes will be published.

## **9. LEGAL IMPLICATIONS**

9.1 The Council has a duty under section 27 to promote and maintain high standards of conduct by Members and co-opted Members of the authority. Under section 28, the authority must adopt a Code dealing with the conduct that is expected of Members when acting in that capacity. Any alleged failure to comply with the authority's Code of Conduct must be dealt with under the adopted local complaints handling arrangements.

9.2 If the authority receives a complaint of a breach of the Code of Conduct, it is therefore obliged to follow its adopted procedures and to do so in a manner that meets the legal duties under section 27, and be seen to be doing so.

9.3 The Standards Sub-Committee is the designated Committee for determination of any final complaints if the Monitoring Officer concludes (as per 8.1.2 of the Complaints Procedure) that informal resolution is inappropriate. Given the nature of the complaints and the Investigator's conclusions, the Acting external Deputy Monitoring Officer considered informal resolution to be inappropriate and the matter was referred for determination by the Sub-Committee.

## **10. FINANCIAL IMPLICATIONS**

10.1 The costs of instructing an external Investigator. At the point of preparing this report the external Investigator's costs of £28,926.90 plus VAT. The final estimate includes a further £10,000 plus VAT to cover the preparation for and attendance at the Sub-Committee meeting and hearing. This is being met from contingency funds, as there is no specific budget for Member investigation. Otherwise, there are no direct financial implications from this report.

## **11. RISK IMPLICATIONS**

11.1 The Member Code of Conduct and process for carrying out investigations into breaches of the Code are part of the Council's overall governance framework. To retain public confidence in the Council, it is important to ensure any investigations are carried out fully and the results openly and transparently reported.

## **12. EQUALITIES IMPLICATIONS**

12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.

- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not. The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

### **13. SOCIAL VALUE IMPLICATIONS**

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at Paragraph 12.

### **14. HUMAN RESOURCE IMPLICATIONS**

- 14.1 As an employer, the Council has systems in place to consider complaints relating to bullying and harassment in the workplace. We have a duty of care to the employees of the Council to allow complaints of this sort to be raised and we have appropriate support mechanisms in place to support the employees involved.

### **15. APPENDICES**

- 15.1 Appendix A – Investigators evaluation of Cllr Leal-Bennett's evidence (relevance and weight).
- 15.2 The Investigator's Report and Appendices One – Six are separately set out and paginated as per the Agenda. Supplemental report and comments.
- 15.3 Cllr Leal-Bennett's witness evidence and appendices.

### **16. CONTACT OFFICERS**

- 16.1 Gavin Miles, Monitoring Officer Broxbourne Borough Council and Acting Deputy Monitoring Officer for this investigation: [gavin.miles@broxbourne.gov.uk](mailto:gavin.miles@broxbourne.gov.uk)
- 16.2 Jeanette Thompson, Senior Lawyer and Deputy Monitoring Officer [jeanette.thompson@north-herts.gov.uk](mailto:jeanette.thompson@north-herts.gov.uk); ext. 4370

### **17. BACKGROUND PAPERS**

- 17.1 Localism Act 2011; NHDC Complaints Procedure for matters relating to the Councillors Code of Conduct; NHDC Code of Conduct. NHDC Constitution.