

PART 1

AGENDA ITEM No.

5

TITLE OF REPORT: TO DETERMINE *EVIDENTIAL & ADMINISTRATIVE MATTERS* - COMPLAINTS 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 This is not a final Sub-Committee determination hearing.
- 1.2 The purpose of this meeting is to consider and resolve administrative issues relating to the preparation for, and Code of Conduct final determination hearing:
- a) The final hearing date and length of hearing;
 - b) Service of witness evidence by Cllr Leal-Bennett and confirmation as to disputed investigation evidence;
 - c) Service of any response to the witness evidence serviced by the external Investigator;
 - d) Legal argument;
 - e) Finalising report and hearing 'bundle';
 - f) Public / or private hearing.

2. RECOMMENDATIONS

That the Hearings Sub-Committee resolve that:

- 2.1 The Sub-Committee hearing is fixed for a 3 days hearing in January on **11th, 12th [13th]/or 15th January 2016** [*unless Cllr Leal-Bennett provides proof by 2nd December that he cannot attend on those dates*].
- 2.2 Cllr Leal-Bennett/ his representative to serve any witness evidence that he intends to rely upon by **4pm on Monday 14th December**.
- 2.3 Cllr Leal-Bennett/ his representative to confirm full details of what investigations witness evidence is disputed, by **4pm on Monday 14th December**.
- 2.4 The Investigator to serve any response as to the relevance of Cllr Leal-Bennett evidence to the complaints by **4pm on Monday 21st December**.
- 2.5 All evidence served either as part of the Investigator's Report or in compliance with the resolutions 2.2 and 2.4 to stand as 'evidence in chief' at the Sub-Committee Hearing.

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

- 2.6 Cllr Leal-Bennett/ his representative to serve any legal argument they intend to rely upon by **4pm on Monday 14th December.**
- 2.7 The Investigator/ external Deputy Monitoring Officer to serve any legal argument in response by **4pm on Monday 21st December.**
- 2.8 The cover report and appendices bundle to be finalised by **23rd December.** In the absence of agreement between the parties, the external Deputy Monitoring Officer shall do so.
- 2.9 Consider and direct whether the final hearing be held in public or private session.

The Sub-Committee may seek the views of the Independent Person and take these into account before making its decision on the resolutions above in accordance with Section 28(7)(b)(i) Localism Act 2011.

3. REASONS FOR RECOMMENDATIONS

- 3.1. To comply with the legislative requirements¹ to deal with such complaints under arrangements adopted by the Council. The Council must comply with the legal requirements regarding the access to reports and supporting material under the Local Government Act 1972² and the requirements for access to agendas and reports for public meetings, or for Members in the event that the meeting is to be held in private session.
- 3.2. The purpose of this pre-hearing resolution is to allow matters at the final Sub-Committee determination hearing to be dealt with fairly, and efficiently for all parties concerned.
- 3.3. The proposed resolutions on service of evidence will ensure that it is clear what evidence Cllr Leal-Bennett intends to call, what evidence in the Investigator's Report is disputed and a response provided as to whether this is considered relevant to the complaints. The same will apply to any legal argument. This is to focus the parties' attention on all relevant disputes of fact (and where applicable) law, deal with them at the final determination hearing effectively and save time in the determination process.
- 3.4. Additionally (and significantly) providing evidence as part of the report process allows the Members of the Sub-Committee to consider this and identify any potential conflicts of interest *prior to* the final determination hearing. Failing to do so could lead to delays at the hearing.
- 3.5. Final Code of Conduct hearings for Members are governed by the same rules as any other meeting of the Council under the Local Government Act 1972. Council business has to be held in public and the documents published in advance, unless one of the exemptions in Schedule 12A to the Act applies. This is subject to a public interest test on disclosure. Paragraph 1 of the Schedule [Information relating to any individual] potentially applies as the information relates to an individual, as may Paragraph 3 [Information relating to the financial or business affairs of any particular person (including the authority holding that information)]. However, as the majority of issues aired in the complaints have been widely disseminated publically, the public interest in publishing such material and conducting the hearing in public is likely to outweigh

¹ Section 28(4),(6) Localism Act 2011.

² Available for inspection / [received by Members] at least 5 clear days prior to the hearing..

those exemptions being applied as they relate to Code of Conduct complaints. As Cllr Leal-Bennett's representative has raised this as an issue, he was requested to confirm any arguments on this matter in advance of today's hearing. No argument has been received at the point of finalising this report.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The alternative is not to propose dates for service of the evidence and narrowing of the factual issues, legal argument and the public/ private hearing. However, this would be counter productive for the reasons set out in paragraph 3 above.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1 Consultation has taken place with the Independent Person and the Chairman of the Standards Committee on the initial referral of the complaint for investigation and for listing the hearing.

6. FORWARD PLAN

- 6.1 Not applicable.

7. BACKGROUND

- 7.1 The Investigator's final Report is not appended. However, when considering whether dates should be fixed for the hearing and evidential/ legal matters (as per the resolutions) the following chronology relating to the investigation and post report process will be pertinent.
- 7.2 On or about 9th February and 23rd 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.
- 7.3 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.
- 7.4 Having considered the complaints and liaised with the NHDC Independent Person, a decision was made to refer the complaints to a firm of solicitors. Olwen Dutton, Partner at Bevan Brittan Solicitors (the 'Investigator') was instructed to investigate the complaints.
- 7.5 27th March 2015: copies of the complaints and appendices were sent to Cllr Leal-Bennett.
- 7.6 April – end July 2015: The Investigator attempted to interview Cllr Leal-Bennett and any relevant witness to answer the Code of Conduct allegations. However, the Investigator was unable to do so.

- 7.7 August 2015: Unable to agree interview dates, the Investigator wrote the Report without Cllr Leal-Bennett's witness evidence.
- 7.8 4th September 2015: The Investigator sent the draft Report and appendices/ witness evidence to Cllr Leal-Bennett for comment by close of business on 25th September 2015. Further copies of statements were requested and emailed.
- 7.9 28th September: Cllr Leal-Bennett sent general comments disputing the report and its methodology.
- 7.10 2nd October 2015: Final Report and appendices/ witness evidence were emailed to Cllr Leal-Bennett by the Investigator.
- 7.11 On 5th October: the Deputy Monitoring Officer wrote to Cllr Leal-Bennett to confirm that the matter had been referred to Sub-Committee for determination by the external Deputy Monitoring officer. Instructions to fix a hearing for 29th October 2015 were also set out. Cllr Leal-Bennett was asked for confirmation of the witnesses he intended to call/ and a copy of their witness evidence and his representative details.
- 7.12 5th October: Cllr Leal-Bennett stated in the response email that he was in London on 29th October and away all of November.
- 7.13 6th October: the Deputy Monitoring Officer wrote to Cllr Leal-Bennett and asked him to confirm availability for a hearing on either 26th, 27th or 28th October, or 1st, 2nd or 3rd December (based on the Investigator, Independent Person and Sub-Committee Members' availability). No response was received.
- 7.14 7th October: the Deputy Monitoring Officer attempted to speak to Cllr Leal-Bennett by telephone to fixing a hearing date, but was unable to do so. Following consultation with the Chairman of the Standards Committee and Independent Person a further date was proposed of 28th October and Cllr Leal-Bennett was again asked for confirmation of witness evidence and disputed evidence forms to be returned by 13th October.
- 7.15 8th October: Cllr Leal-Bennett responded indicating he would not be available for the hearing on 28th October and he proposed 3rd December, subject to other (unnamed persons) attending. He stated that he would contest all of the statements and would wish to provide witnesses especially those associated with Hitchin Town Hall Limited.
- 7.16 14th October: following consultation with the Independent Person and the Chairman of Standards Committee, the date of 2nd December was fixed on the basis of availability of all parties. This was confirmed by letter to Cllr Leal-Bennett by the Deputy Monitoring Officer. The letter again requested confirmation of Cllr Leal-Bennett's witnesses and statements and set out that the Sub-Committee hearing would be a Part 1 (public) hearing. No response was received.
- 7.17 23rd October: a paginated copy of the (then) cover report, Investigator's Report and appendices/ witness evidence were couriered to Cllr Leal-Bennett. The letter set out that this would be a Part 1 public hearing. Cllr Leal-Bennett was informed that if he had any queries or representations regarding the public nature of the hearing he should make them before 20th November.
- 7.18 23rd October: Cllr Leal-Bennett sent a response letter and said that he wanted the hearing of 2nd December to be delayed until January 2016 (although no dates were provided as to when Cllr Leal-Bennett was able/ unable to attend).

- 7.19 29th October: the Deputy Monitoring Officer responded that her instructions had not changed regarding the hearing on 2nd December. That same day Cllr Leal-Bennett then confirmed the name of his legal representative (Mr Widdowson).
- 7.20 30th October: Mr Widdowson sought a postponement of the hearing on 2nd December on the basis of Cllr Leal-Bennett's leave and that he now wished to take legal advice / it was unreasonable to proceed. It was proposed by Mr Widdowson that the final hearing should take place in January 2016 and that 3 days would be required. No dates were provided when Cllr Leal-Bennett was able/ unable to attend in January.
- 7.21 30th October: a response was provided by the external Deputy Monitoring Officer, which agreed that the final hearing on 2nd December was postponed and that a 3 day hearing be listed in mid January. The letter set out that the 2nd December Sub-Committee meeting would be retained to deal with disclosure of evidence, any documents Cllr Leal-Bennett claimed had not been disclosed and whether the hearing is held as a Part 1 public or Part 2 private hearing.
- 7.22 3rd November: Mr Widdowson responded by email, indicating that he did not see the necessity for a hearing on 2nd December. He stated that he expected to be able to inform [the Council] of the witnesses that would be called and additional documents that Cllr Leal-Bennett required by the end of the first week in December (i.e. by 4th December). Mr Widdowson said that he would request documents and that this could be resolved, he believed, between the parties without the need for a hearing.
- 7.23 3rd November: Mr Widdowson requested documents. This was acknowledged that day and copies of the documents emailed on 4th November.
- 7.24 9th November: A letter was sent to Mr Widdowson proposing the dates for the hearing (above) and inviting him to agree this and those on witness evidence, legal argument by 19th November. He was invited to provide the representations on a public/ private hearing by close of business on 1st December.
- 7.25 11th November: Mr Widdowson responded that Cllr Leal-Bennett could not attend a hearing the week of 11th January, as it was not convenient to his client as he had previously informed Mr Widdowson that he was out of the country. He suggested that the matter be postponed until February (given the Independent Person's non-availability at the end of January). He was also unwilling to agree any dates for outstanding administrative and evidential matters, and that in the absence of agreement it would be a matter for [the Sub-Committee] to be deal with.
- 7.26 12th November: A response was provided by the Deputy Monitoring Officer indicating that the proposal of 11th -13th / or 15th January for final hearing was based on the:
- 1) known availability of Cllr Leal-Bennett (and the fact that he was due to Chair the Hitchin Area Committee on 12th January – and no notification had been received from him that he unable to do so);
 - 2) listing period outlined by the external Deputy Monitoring Officer (of a mid January hearing) in the letter of 30th October agreeing the postponement. (If this had not been convenient, then this should have been made clear when Mr Widdowson responded on 3rd November); and
 - 3) that the proposals for evidence followed Mr Widdowson's proposals that he should be in a position to confirm witnesses by the end of the first week in December.

Mr Widdowson was asked to provide proof that Cllr Leal-Bennett was out of the country on 11-15th January for the Sub-Committee's consideration and to supply dates in January when he was available for the hearing.

- 7.27 Mr Widdowson has not supplied proof that Cllr Leal-Bennett cannot attend on 11th /12th /13th or 15th and is unable to supply dates for February at this stage. Given this fact the Sub-Committee will need to consider whether to list on 11th /12th /13th [or 15th], or in February and all other issues remain outstanding at the stage of finalising this report.

8. LEGAL IMPLICATIONS

- 8.1 The Council has a duty under section 27 of the Localism Act 2011 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. The Standards Sub-Committee should undertake its decision making process in a fair, independent and politically impartial manner.
- 8.2 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.
- 8.3 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 external Deputy Monitoring Officer considered informal resolution to be inappropriate and the matter was referred for determination by the Sub-Committee.
- 8.4 The Standards Sub-Committee is a formal meeting of the authority and not court of law. It does, however, control the procedure and evidence presented at the final determination hearing, including the number of witnesses and the way witnesses are questioned. It will also make the decision on whether the hearing is held in public or private session; in the latter situation if there is a legitimate legal reason for doing so under the Local Government Act 1972 provisions.

9. FINANCIAL IMPLICATIONS

- 9.1 The costs of instructing an external Investigator: up to 9th October 2015 this was £27,951.90 plus VAT. The final estimate is still awaited, however, it is anticipated that this will be at least 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.

10. RISK IMPLICATIONS

- 10.1 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.

11. EQUALITIES IMPLICATIONS

- 11.1 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.
- 11.2 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.

12. SOCIAL VALUE IMPLICATIONS

- 12.1 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.

13. HUMAN RESOURCE IMPLICATIONS

- 13.1 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.

14. APPENDICES

- 14.1 None.

15. CONTACT OFFICERS

- 15.1 Gavin Miles, Monitoring Officer Broxbourne Borough Council and Acting Deputy Monitoring Officer for this investigation: gavin.miles@broxbourne.gov.uk
- 15.2 Jeanette Thompson, Senior Lawyer and Deputy Monitoring Officer
jeanette.thompson@north-herts.gov.uk; ext. 4370

16. BACKGROUND PAPERS

- 16.1 Localism Act 2011; Local Government Act 197; NHDC Complaints Procedure for matters relating to the Councillors Code of Conduct; NHDC Code of Conduct. NHDC Constitution.