

1 Introduction

This is a report into two complaints made in respect of Cllr David Leal-Bennett. It is alleged that he breached the Council's Code of Conduct (which is attached as Appendix One) and also that he breached the Member/Officer Protocol of the Council (attached as Appendix Two).

1.1 The first complaint (attached as Appendix Three) is made by Mr David Scholes who is the Chief Executive and Head of Paid Service of North Herts District Council. In his complaint Mr Scholes alleges breaches of the Code of Conduct by Cllr Leal-Bennett in relation to the following situations:-

- 1.1.1 It is alleged that Cllr Leal-Bennett has breached the Council's Code of Conduct in relation to paragraphs 3.2(b), (c) and (d). The allegations are Cllr Leal-Bennett has failed to show respect and consideration for others on numerous occasions; he has used behaviour that would be characterised as bullying and harassment in respect of Council Officers and its contractors and he has used his position as an elected Councillor to exert pressure and influence decision making by Council Officers, its contractors and elected Members of the Council, thus comprising the impartiality of the Authority.
- 1.1.2 It is alleged that Cllr Leal-Bennett has acted in a way that could be regarded as bringing his Office or the reputation of the Council into disrepute contrary to paragraph 3.4(a) and (b), by criticising Officers directly in the press and being complicit in criticising the actions of the Council, the progression of the Hitchin Town Hall Project and the capability of Officers.
- 1.1.3 It is alleged that 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.
- 1.1.4 It is alleged that Cllr Leal-Bennett when participating in meetings and reaching decisions did so without paying due regard to advice from the Council's Monitoring Officer and the Council's Head of Paid Service.

1.1.5 It is alleged that Cllr Leal-Bennett has not complied with other Council policies which set out required conduct from members. In particular there have been breaches of the Protocol for Member Officer Relations. Cllr Leal-Bennett, it is alleged, has a pattern of behaviour that has:

- (a) Failed to respect the roles, workplace and pressures of Officers;
- (b) Acted in a way that has lacked respect;
- (c) Has bullied officers or has sought to use his office to advance the position of HTHL;
- (d) Has criticised individual Officers in public;
- (e) Has failed to take into account advice from the Head of Paid Service and the Monitoring Officer.
 - (i) It is alleged that Cllr Leal-Bennett has failed to observe paragraph 3.3 in his dealings as a Director of HTHL: he should not misuse the privilege of being a member of the Council by disclosing confidential information and blur the lines between his Director role with HTHL and that of an elected Member.
 - (ii) It is also alleged that Cllr Leal-Bennett has failed to follow the rules of the Council in relation to the Declaration of Interests.

1.2 The second complaint in respect of Cllr Leal-Bennett is from Cllr Patricia Cowley (who did not stand for re-election in May 2015). This complaint is attached as Appendix Four.

Cllr Cowley alleges that Cllr Leal-Bennett has breached the rules of conduct in the Council's Constitution; in particular:

1.2.1 paragraph 3.4(a) - not to conduct himself in a manner which could reasonably be regarded as bringing himself or the authority into disrepute; and

1.2.2 paragraph 3.6 of the Code, which states "when participating in meetings or reaching decisions regarding the business of the authority to serve 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 the authority's Monitoring Officer/Chief Legal Officer.

1.3 I was duly appointed as the Investigating Officer by the Monitoring Officer of Broxbourne Borough Council, who, under arrangements agreed between the Councils, was acting as Monitoring Officer to North Hertfordshire as the Monitoring Officer was conflicted. I duly conducted an investigation into the complaints against Cllr Leal-Bennett and set out my findings and the evidence upon which I rely to make those findings, below.

1.4 My draft report was sent on Friday 4th September to Cllr Leal-Bennett, to former Cllr Cowley, Mr David Scholes and the Councils Monitoring Officer for the purposes of the arrangements in force. I asked all of them to consider the report and let me have any comments back by the close of business on Friday 25th September, which comments I would then take into account before my report was finalised. Cllr Cowley, Mr Scholes and the Monitoring officer told me that they did not have comments.

1.5 On 15th September I received an email from Cllr Leal-Bennett. He asked

"To whom has this report been sent.

I am unable to read the appendices, please send them unzipped"

I answered the question and resent the appendices the same day.

On 23rd September Cllr Leal-Bennett wrote to me by email saying that he did not appear to have received the statement of Cllr Needham. As I was away on annual leave at the time my assistant replied informing him where the statement was to be found.

On Monday 28th September I received an email from Cllr Leal-Bennett as follows:

"I have reviewed the statements and will be reading your report in detail shortly; however I wish to express my serious concern about the methodology you have used since I do not believe that this is selective to the Code of Conduct charges but covers a much wider remit.

It is clear when reading the statements that both officers and elected members are unable to differentiate between my role as a trustee/director of a Registered Charity/Company Limited by Guarantee and my role as a councillor. I have always gone to considerable length in how I operate in both roles but this seems to have been completely missed and I am being judged under the CoC complaint as a trustee/director as well as a councillor.

Bearing in mind that the situation with Hitchin Town Hall Ltd ("HTH") is likely to end in litigation it is wholly inappropriate that my actions and reactions at meetings be considered as a councillor. I would in fact argue that in acting as a trustee/director, and because of the intransigence of a certain officer, that my negotiating stance had to be direct and robust at all times. I, and my fellow trustees/directors could not have behaved any differently.

As such, it is important that you now interview the other directors and some other individuals to receive the fullest picture of the last 4 years of negotiation and how the relationship with NHDC deteriorated over that time with a total lack of trust on the part of HTH and a formal complaint against Mr Robinson on some 13 counts not least the misreporting of meetings. This of course has subsequently been the subject of a claim for Material Breach and will no doubt end up in court with a damages claim if not resolved very shortly.

Unless you are able to remove all references/incidents to me as my role as a trustee/director then I am afraid the report is severely biased and in view of potential litigation between the two parties probably better shelved for the moment or rewritten.

I am also disturbed that NHDC have now refused to pass on copies of all requested files stating that I will now have to obtain the permission of the ICO before they release any more. It seems that NHDC are able to use their own files and records to provide selective evidence but will not permit me the same courtesy. I am also concerned at the amount of taxpayers' money that is being wasted on this 'process'. I was not going to challenge anything and let it be but clearly there has been no differentiation between my roles and I have no option other than to defend myself."

I replied to Cllr Leal-Bennett as follows on Tuesday 29th September as follows:

Dear Cllr Leal-Bennett,

Thank you for your email.

I have noted your comments.

My draft report deals with your behaviour as a councillor, and I have considered this aspect in accordance with the Code of conduct of NHDC, and made my draft findings accordingly.

My email to you of 4th September made it clear that the deadline for receiving comments was 25th September. I am not prepared to reopen the investigation by interviewing witnesses as you NOW suggest, or by meeting with you on Thursday. You had plenty of opportunity to do this before my draft report was prepared – the correspondence evidencing this is appended to my draft report-and you chose not to do so.

I am not instructed with regard to your dispute with NHDC and the release of files.

I will be finalising my draft report and sending it to the Monitoring Officer this week."

Cllr Leal-Bennett replied to me later the same day to say

"Fine thank you

I think enough time and money has been spent on this - I have no further comment."

Accordingly I have proceeded to finalise my report.

2 Summary Conclusions

2.1 Since the advent of the Localism Act 2011, in order for the Council's Code of Conduct to apply, the Member complained against must at the relevant time have been acting in the capacity as an elected Member. Taking this into account it appears to me that it is clear that throughout the events complained of Cllr Leal-Bennett was acting in his capacity as a Councillor and therefore the Code of Conduct will apply. I make a finding accordingly.

2.2 I also make findings in respect of the allegations in respect of the code of Conduct as follows:

2.2.1 I find that Cllr Leal-Bennett offended against paragraphs 3.2 (b) (c) and (d);

2.2.2 I find that Cllr Leal-Bennett offended against paragraphs 3.4 (a) (b) and (c)

2.2.3 I find that Cllr Leal-Bennett offended against paragraph 3.5

2.2.4 I find that Cllr Leal-Bennett offended against paragraph 3.6

2.3 Furthermore, I find that Cllr Leal-Bennett offended against the Member/Officer Protocol in that his behaviour did not comply with the standards of behaviour set out in the Protocol at Paragraph 3.2 which Officers can expect from members; which is an offence against paragraph 3.7 (c).

3 The Evidence

3.1 In the course of my investigation I have interviewed the following:

3.1.1 Cllr Ray Shakespeare-Smith;

3.1.2 Cllr Lynda Needham;

3.1.3 (former) Cllr Patricia Cowley;

3.1.4 David Scholes, Head of Paid Service NHDC;

3.1.5 Anthony Roche, Acting Monitoring Officer NHDC;

3.1.6 Katie White (former) Monitoring Officer NHDC;

3.1.7 Howard Crompton, Head of Revenues, Benefits and IT, NHDC;

3.1.8 John Robinson, Strategic Director, Customer Service NHDC;

3.1.9 Sharon Nahal, Assistant to John Robinson;

3.1.10 Steve Crowley, Contracts and Projects Manager

3.1.11 Nigel Schofield, former Committee and Member Services Officer

3.2 I am grateful to all those interviewed for their cooperation and for the help of other officers at NHDC who assisted in setting up interviews and providing documentation for me.

3.3 Copies of all statements are included in Appendix 5. The complaint by David Scholes included a large number of documents, which are attached to his complaint and which I

have considered. I have also been supplied with some additional evidence such as emails and file notes, and I have referred to these throughout the report and appended them where I have relied upon these. The evidence in support of these complaints goes back until when Cllr Leal-Bennett was first elected in May 2012. Whilst it is unusual for complaints to go back so long, there is no bar on doing so either in the law or in the Councils policy. In this case, it seems to me that as the complaints concern a pattern of behaviour rather than a single incident, it is appropriate that the evidence covers the length of time it does.

3.4 I have not been able to interview Cllr David Leal-Bennett. Cllr Leal-Bennett assured me from the start of my investigation that he was willing to be interviewed and when we first spoke he agreed with me the importance of getting a date for interview set at an early stage. Whenever we have spoken he has appeared willing to cooperate. However, despite frequent attempts on my part to set a date for interview, and giving Cllr Leal-Bennett what I consider to be sufficient time (over a period of months) during which he should have been able to make arrangements to review the papers and meet with me, it has proved impossible to interview. Details of our exchanges appear below and in Appendix 6. Accordingly, I have to write this report without the benefit of having heard from Cllr Leal-Bennett, which I find very regrettable, both in terms of the investigation and also from the point of view of his willingness to comply with the Councils Code of Conduct itself.

3.5 In such a situation and given that it is an offence under paragraph 3.4 (c) of the Council's Code of Conduct not to comply with an investigation, I make an additional finding in respect of Cllr Leal-Bennett that he has failed to comply with the Code of Conduct under that provision, as it is my opinion that in reality he has not cooperated with this investigation.

4 The Background

4.1 Cllr Leal-Bennett was elected as a Member of North Hertfordshire District Council (NHDC) in May 2012. The evidence shows that he made an impact from the start. It is important to recognise that in May 2012 the Council had to observe a national standards regime imposed by the Local Government Act 2000. During Cllr Leal-Bennett's first week, on 10 May 2012, there was an extraordinary Council meeting called, which considered the Hitchin Town Hall Project; at the time Cllr Leal-Bennett was a Director of Hitchin Town Hall Limited (HTHL) He was advised by Katie White, the Monitoring Officer, that this meant he had a prejudicial interest (under the standards regime then in place) and accordingly should not take part in the meeting.

- 4.2 Cllr Leal-Bennett challenged this opinion and despite meeting Katie White and David Scholes both of whom explained to him why that advice had been given, at the full Council meeting on 10 May Cllr Leal-Bennett stood up and was very critical of the advice that he had been given, using (in the statement of Anthony Roche) "very strong words". A week later, on 15 May at a new Member training evening, Cllr Leal-Bennett sat with Anthony Roche and discussed the potential conflict that he might have due to his role with HTHL and also issues around bias and pre-determination which he needed to consider. I have noted this because it shows that right from the start of Cllr Leal-Bennett's elected to the Council; he was advised about and so would have been aware of the issues around bias and pre-determination and of the rules relating to conflicts of interest.
- 4.3 The Localism Act 2011 brought in significant changes to the Standards regime, abolishing the 2000 Act rules and instead requiring all Councils to adopt new codes of conduct in accordance with the Localism Act and the Regulations around Disclosable Pecuniary Interests. North Herts adopted a new Code of Conduct on 12 July 2012, at a Council meeting at which Cllr Leal-Bennett was present. He was, in common with other members, then required to complete his Register of Interests but he only completed it after he had been chased by Officers.
- 4.4 In order to understand this matter correctly it is important to understand the role played by the Hitchin Town Hall Project, the role of Hitchin Town Hall Limited ("HTHL") and the role of Cllr Leal-Bennett as a Director of HTHL. Details of the Hitchin Town Hall Project are described in the statements of John Robinson and David Scholes in particular. Other Officers also refer to the situation.
- 4.5 In brief, the background is as follows. In approximately 2008 North Herts District Council decided that it would develop a single museum for the district which would be set in Hitchin Town Hall, which is a listed building in Hitchin owned by the Council. The plan was to deliver this in partnership with a charitable company, Hitchin Town Hall Limited ("HTHL") who proposed to bring funding (via the Social Investment Bank) into the scheme in return for a lease from the Council on part of the Town Hall and also of an adjoining building where they proposed to raise income from providing a community facility for events. This also involved the Hitchin Town Hall Gymnasium and Workman Hall Trust, of which the Council is the only Trustee. The proposed lease did not include the museum. In 2012 the Council agreed to enter into a Development Agreement with HTHL and in 2013 due to a desire to extend the site by incorporating an additional building, a second Development Agreement was completed.

- 4.6 As far as the Council is concerned, the progression of the construction contract for the project had gone relatively well, the project being run using Prince 2 methodology with John Robinson, the Council's Strategic Director of Customer Services as the Project Director. HTHL are members of the Project Board. When Cllr Leal-Bennett was elected to NHDC in May 2012 he was already a Director of HTHL. Whilst the relationship between the Council and HTHL was a reasonable one at the start of the project with Sharon Nahal saying that the first person leading for HTHL was "lovely, never rude and the negotiations with her were pleasant and professional", relationships have since deteriorated significantly. David Scholes described them as "very poor" saying that he had "had to get more involved in the project than he would normally expect with a project of this scale and complexity"
- 4.7 Cllr Leal-Bennett, (and apparently HTHL) did not like the way that the project was being run, complaining for example in March 2014 about the way in which the project was being handled and making complaints about John Robinson in particular which led to the Council requesting an investigation being carried out by the Local Government Association. I am told the outcome of the investigation (although I have not seen it) was that it found that there was no substance to the complaint made by HTHL.
- 4.8 The problems with the project continued (for more detail see below) and I understand that in late 2014 the funders of HTHL, the Social Investment Bank, decided to withdraw funding from HTHL due to multiple breaches of their agreement. Since June/July 2014 HTHL has withdrawn from the Project Board and have had no formal contact with the rest of the Project or with the Council. They do however continue to generate articles in the press and write to Members of the Council, community groups and to attend Council meetings. As a result of the funding situation the proposed lease to HTHL has not been completed.
- 4.9 From the documentation I have seen, the matters raised by HTHL about the project focused in particular on the issue of building a wall on the stage in the community facilities it was intended would be included in the lease to them, in order to provide necessary storage for the museum. Despite the fact that this had been included in the lease proposals from the outset and was designed so that the stage remained, in the view of the Council, of a size to make it usable for the events that had been envisaged would be taking place in the centre, the issue of the wall caused a significant clash between the Council and HTHL, who made considerable use of the local press to publicise their views. These included statements in the press from Cllr Leal-Bennett about the Council; and the relevant press cuttings are included in the bundle of papers provided as attachments to David Scholes' complaint.

- 4.10 I was told that at that start of the Hitchin Town Hall project HTHL put several senior members of the Council under pressure to provide a £20,000 loan to the company and this loan was agreed at a Council meeting on 15 October 2012. Loan repayments to the Council from HTHL were due to start in 2013 but in August 2013 HTHL said they would be unable to start the payments; in February 2014 claiming that the wall across the stage had meant that they were unable to do any fund raising and therefore did not have sufficient income.
- 4.11 As mentioned above, Cllr Leal-Bennett was an existing Director of HTHL when he was elected to the Council in May 2012 and records at Companies House show remained a Director of the Company until December 2014. His role with HTHL has been background to many, although not all, of the complaints made against him, especially with regard to the issues about the declaration of Interests. His role as a Director had no effect on the requirements for him to comply with the Councils Code of Conduct and other policies, including the Member/Officer protocol.
- 4.12 A great many of the statements of Cllr Leal-Bennett, both in public and in email correspondence I have seen refer to his view that the project has overrun in time and cost and that someone has to be accountable for this. The Council has consistently disagreed with this view.

5 Declarations of Interest

- 5.1 There are numerous complaints about Cllr Leal-Bennett refusing to make declarations of interest. The officers I have interviewed, in particular David Scholes, Katie White, Anthony Roche and John Robinson all referred to difficulties in getting Cllr Leal-Bennett to make declarations of interest, most often in relation to his role with HTH Limited. The Monitoring Officers, Katie White and Anthony Roche, referred to this as being "an on-going issue" and their evidence concerning this was detailed and entirely credible.
- 5.2 In respect of this, the evidence behind which seems to me to include a definite pattern of behaviour on behalf of Cllr Leal-Bennett, I was referred to both specific incidents and the generality of how Cllr Leal-Bennett behaved. The Council's code of conduct has two classes of interest that need to be declared by members. The first of these is, as required by the legislation set out in the Localism Act 2011, the registering of Disclosable Pecuniary Interests (DPIs) which members must declare and if not they could possibly face criminal prosecution; the second is the issue of declarable interests, known by the Localism Act as non-disclosable pecuniary interests. The code of conduct of the Council requires both of

these classes of interests to be declared at all times at meetings, and furthermore, requires that when a member has a DPI, they leave the meeting unless they have a dispensation, as provided for in the Localism Act. I understand that Cllr Leal-Bennett has never asked for a dispensation in respect of his relationship with HTHL; although whether or not it would have been appropriate to grant one in the circumstances is another matter.

- 5.3 In so far as the issue of DPIs is concerned, both Katie White and Anthony Roche referred in their evidence to numerous times when they advised Cllr Leal-Bennett that he should declare an interest at a meeting and leave but when he refused to do so. In particular, Katie White described how, upon her return from maternity leave in 2013, shortly before the day after the Council and HTHL signed an amended Development Agreement, she wrote to Cllr Leal-Bennett about his interests due to her awareness of two committee meetings coming up which he would attend, which involved Hitchin Town Hall and therefore HTHL and so in which she considered that he would have a declarable interest and possibly a DPI.
- 5.4 It appears that Cllr Leal-Bennett responded (although not directly to Ms White) by revising his register of interests to remove a reference to his directorship of HTHL. However as a search at the company's house showed that he remained a director of the company his interest would, as a matter of law, also remain, despite whether it appeared on his register of interests, and in fact by removing it in such circumstances he was exposing himself to a possible criminal charge.
- 5.5 Subsequently, Katie White instructed Tim Straker QC, a highly respected Leading Counsel specialising in local government law, to advise as to whether or not he considered that Cllr Leal-Bennett's role with HTHL was a DPI and a declarable interest. I have seen the brief to Mr Straker and his advice. Mr Straker agreed with Ms White, saying that "under the circumstances under consideration [that Cllr Leal-Bennett as was a director with HTHL]...it seems virtually inconceivable that there is not a disclosable pecuniary interest". As Cllr Leal-Bennett refused to clarify the timescales when he would respond to Katie White's queries about this register of interests, she eventually, on 4th March 2014 made a complaint to Hertfordshire Police who took a long time to investigate but decided ultimately some time later that they were going to take no action, saying that they considered that the circumstances "make a prosecution inappropriate", "in the absence of judicial interpretation" (letter from Dr Nathan Briant, Hertfordshire Police to David Scholes dated 20 February 2015, attached in Appendix 5) .

- 5.6 Anthony Roche, whose evidence appears in Appendix 5 has, during much of the relevant time acted as the Acting Monitoring Officer to the Council, mainly due to Katie White's absence on maternity leave from May 2012 to August 2013 and from August 2014 to May 2015. Now that Katie has left he remains as Acting Monitoring Officer. It is one of Anthony's duties, in that role, to advise members on matters such as Declaration of Interests. Both Katie and Anthony referred to the fact that Cllr Leal-Bennett has received far more individual advice from them and the other solicitors working for NHDC than any other member and produced extensive evidence in the form of emails and file notes from them and their colleagues which showed this advice; yet Cllr Leal-Bennett refused to declare when he very clearly did have such an interest.
- 5.7 For example, in most circumstances, Cllr Leal-Bennett refused to accept that due to his role as a director of HTHL he had a Disclosable Pecuniary Interest in matters relating to Hitchin Town Hall. He apparently claimed that he was not paid in his role as Director and so this was not an issue and did not give rise to a DPI. In the view of the Monitoring Officers and Tim Straker, he was wrong. He also refused, once he resigned in November 2014 as a director of HTHL, to accept the advice of Anthony Roche that under the Council's code of conduct whilst he may no longer have a Disclosable Pecuniary Interest, he did have a declarable interest due to his close continuing association with HTHL. This came to a head in December 2014 at a meeting of the Council's Overview and Scrutiny Committee about the Town Hall project which Cllr Leal-Bennett attended in his capacity as a member of the OSC.
- 5.8 The details of the events at the meeting are set out in the evidence of Anthony Roche and David Scholes included in Appendix 5. It seems to me that although Cllr Leal-Bennett "grudgingly left" during Part 2, on that occasion Anthony's concerns about the need to protect the Council were certainly justified on a prima facie basis, and he was doing his job in trying to protect the Councils interests.
- 5.9 The refusal of Cllr Leal-Bennett to declare interests and leave the meeting when appropriate to do so has continued into 2015. For example at a full Council meeting on 12 February 2015 when at Council a Hitchin Town Hall item affecting HTHL was considered Cllr Leal-Bennett refused to leave the meeting, despite being advised by Anthony Roche that he should do so due to his previous involvement with HTHL. This caused the Chairman to pull the item from the agenda, and caused unfavourable press coverage, as well as resulting in a second extraordinary Council meeting held on 10th of March when Cllr Leal-Bennett, after receiving advice and then put under questioning from the chairman "left

the meeting, very reluctantly and still without declaring his interests" causing further damaging press coverage to the Council.

- 5.10 Cllr Leal-Bennett has also been inconsistent in his declaration of interest, particularly in relation to the Hitchin Area Committee meetings. For example, records show that he did not declare an interest whilst he was present at the HAC and a director of HTHL Limited until he had become the chairman of the Hitchin Area Committee from June 2014. Once Cllr Leal-Bennett had resigned as the director of HTHL he made no declaration of interest at Hitchin Area Committee meetings even though, in the view of the Monitoring Officer, Anthony Roche (at the time) his close association with HTHL Limited, which evidence showed was continuing was a breach of the Code of Conduct as he did not declare a declarable interest and leave the room.
- 5.11 Concerns about Cllr Leal-Bennett's refusal to declare an interest are also a feature of the evidence of David Scholes, Cllr Needham, John Robinson, and Cllr Cowley. I have also seen emails from other legal officers which make it clear that Cllr Leal-Bennett was advised that he had either a DPI or a declarable interest.
- 5.12 As I have not been able to interview Cllr Leal-Bennett I do not know what he would have said in support of his refusal to declare an interest. I have though, been provided with copies of documents such as a letter from Eric Pickles MP, (the then Secretary of State for DCLG) to Peter Lilley MP dated 10th March 2015 which I understand Cllr Leal-Bennett used in support of his actions; and I was told that he had also claimed that his view was supported by the Conservative Councillors Association. I do not know of any legal advice he obtained, but I have not been shown any evidence that he referred to any in support of his view.
- 5.13 In summary, it seems to me that the officers concerned; in particular, Katie White and Anthony Roche, did everything that they could to deal with the matter and, treated Cllr Leal-Bennett with dignity and patience, as evidenced in the many emails which they have referred me to, and have been throughout consistent in their views about his interests. Furthermore, other lawyers who have been involved, both from the Council and outside, have also agreed with their interpretation of the law. For example, as referred to above Katie White obtained the opinion of a Leading QC, Tim Straker QC who agreed with her as to Cllr Leal-Bennett's position. He has also been advised by David Scholes.
- 5.14 It seems to me that it is beyond question that Cllr Leal-Bennett was advised correctly about the position in relation to his role as a director with HTHL Limited being a Disclosable

Pecuniary Interest which he should have declared, accepting the advice given by officers and so complying with the Code by declaring an interest and leaving Council meetings whilst the matter was being discussed. The fact that Hertfordshire Police did not take a criminal prosecution is no indication whatsoever, to my mind that the view of the lawyers was incorrect. Equally a letter from Eric Pickles and the views of the CCA, neither of which amount to legal advice is also scant excuse for blatantly ignoring what he was very clearly advised to do.

- 5.15 The Member/Officer protocol provides " Members will have due regard to advice received from the Head of Paid Service, Chief Financial Officer and Monitoring Officer when those officers are acting pursuant to their statutory duties" and Cllr Leal-Bennett did not follow this requirement. The Councils Code of Conduct also requires that members must have regard to the advice given by officers. Cllr Leal-Bennetts behaviour breaches both of these.

6 Cllr Leal-Bennett's Behaviour towards Officers

- 6.1 One of the complaints against Cllr Leal-Bennett is that by his behaviour he continuously breaches the Council's member/officer protocol. The evidence from all of the Council witnesses whom I have interviewed very clearly indicates that Cllr Leal-Bennett behaved in a way which is in contradiction and contravention of the member/officer protocol. This is both as a pattern of behaviour and in relation to certain incidents. In the words of those interviewed: Cllr Needham said "I think that he bullies officers"; Cllr Cowley said "his attitude seems to be that officers do not know what they are doing and whilst they have got a duty to advise him, if he does not like the advice he will contradict them". David Scholes said "I am very concerned about the way in which Cllr Leal-Bennett deals with members of staff at all levels". Katie White said "In my opinion his attitude towards officers lacks any understanding of what is and is not acceptable behaviour and he appears to regard officers as obstructive, power hungry and bent upon blocking democracy with the Council...I am not sure whether his behaviour is due to unwillingness or a lack of ability to understand the way in which Local Authorities operate and the role of officers within that. He will rarely engage with officers at all other than in a bullish, instructed and obstructive way". John Robinson described Cllr Leal-Bennett as "the most difficult Cllr I have ever worked with...I believe that his behaviour and attitude has a very adverse affect on the ability to run the Council as effectively as possible. His behaviour towards officers is often very regrettable. Whilst he can be very charming, normally his attitude towards officers is very unpleasant, often aggressive and lacking in respect".

- 6.2 As well as these statements, the people I have spoken to gave specific examples about Cllr Leal-Bennett's behaviour. Katie White referred to an incident when, she was seven months pregnant, and standing outside the Council Chamber in which a Project Board meeting was taking place. Cllr Leal-Bennett assumed [incorrectly] that he had a seat at the Project Board and in his desire to attend pushed Katie White through the door by pushing her in the small of her back. She described this as follows "it was a firm projectional push forward from him. There was no consent from me at all at that or any other time for him to touch me". Katie White reported the incident to David Scholes who wrote to Cllr Leal-Bennett advising him that this was a further example of inappropriate conduct, which Cllr Leal-Bennett apparently indicated he did not accept.
- 6.3 Katie White also referred to a threat from Cllr Leal-Bennett to report her to the Law Society when she had informed him of Leading Counsel's advice (referred to above) which supported her interpretation of the fact to conclude law and that he did have a DPI. Cllr Leal-Bennett then wrote to her saying "I consider your continual harassment over this issue extremely serious and will be writing to the Law Society to make a formal complaint". Katie interpreted this as an attempt to bully her even though Cllr Leal-Bennett did not apparently follow through with a complaint. Katie White also referred to Cllr Leal-Bennett's behaviour at Council meetings when "he sits in the back row of the Chamber and glares at officers who are giving advice that he does not like. He openly challenges in any forum the advice that officers give, to suit what he is trying to achieve, regardless of the propriety of doing this".
- 6.4 Katie White, Anthony Roche and David Scholes referred to the impact of the Westminster Great Hall debate in January 2013 when they believe Cllr Leal-Bennett passed information to Peter Lilley MP which gave coverage which was very damaging to the Council and especially to the role of the Monitoring Officer, particularly Anthony Roche who was acting Monitoring Officer at the time. I was told that Cllr Leal-Bennett has referred to "incorrect" advice from the Council's Monitoring Officer on numerous occasions since and David Scholes referred to a local plan briefing meeting on 15 October 2015 which was held in the presence of Susan Ormsby QC at which such a reference was made; which David Scholes said "In my view, this was a deliberate attempt to seek to undermine our most senior lawyer in the presence of Leading Counsel". In regard to the Great Hall debate, Anthony Roche said that the information about NHDC reported in the debate did not reflect the true position of the advice which had been given and which would have addressed the criticisms made and he felt that the debate which was widely reported and in which he was named was extremely damaging to him personally. Furthermore they alleged that Cllr Leal-Bennett

used his Twitter account to publicly criticise Anthony Roche and the Chairman of the Council, saying "The Monitoring Officer has previously been chastised by a government minister and Peter Lilley of poor interpretation of the rules".

- 6.5 Howard Crompton gave evidence about the behaviour of Cllr Leal-Bennett in August 2014 when he walked into the IT area unannounced and without letting senior officers know he wanted to visit; and started to speak to very junior staff, including an apprentice, making comments about the value of what they did which made them feel very uncomfortable. Howard Crompton said "They were very derogatory comments and the IT staff felt uncomfortable and uneasy and felt he had a hidden agenda He dismissed as irrelevant the issue of the Council having to adhere to strict security... he upset a number of the IT team who felt "put on the spot" and "uncomfortable" by his inquisitorial tone". The file note of David Scholes of a meeting with Cllr Leal-Bennett on 24th September 2014 corroborates the evidence of Howard Crompton.
- 6.6 Sharon Nahal referred to Cllr Leal-Bennett being "very abrasive and rude both in person and also in some of the emails he has sent". She referred to a time in July 2014 when there was some confusion about a meeting date, even though Sharon had sent an email about the meeting to Cllr Leal-Bennett and when she raised this he said "there was no need [for her] to get lippy". She also referred to Cllr Leal-Bennett criticising her minute-taking in open meetings and "wanting to change the record of the meeting from what took place".
- 6.7 One of the most serious allegations against the behaviour of Cllr Leal-Bennett is made in relation to John Robinson on 13 February 2013. Cllr Leal-Bennett sent an email which included the following: "Rosemary, don't worry he [John Robinson] is being an idiot and does not understand so that means he is dangerous. Have spoken to DM and this will be covered in our response. A non-issue. Brent, do you have that guy's name who can fix Robinson for good!!". Whilst it is probable that John Robinson was inadvertently copied into this email trail sent by Cllr Leal-Bennett to others concerned with HTHL, his view, and that of David Scholes was that "For a member of the Council to write such an email and make such a threat is [to my mind] very concerning". Steve Crowley referred to John Robinson coming "under extreme provocation from Cllr Leal-Bennett from both what he has said and how he has said it".
- 6.8 The evidence of Nigel Schofield was that "I could not say that...he speaks to officers in a bullying way. However I do regard his behaviour as close to unacceptable...I do think he is

too strong in committee meetings, goes further than being robust. I do not think he behaves maliciously deliberately; it is just his way of getting what he wants for Hitchin". Steve Crowley said "I found his email style not necessarily rude or aggressive but very blunt...when I have been at the site with him he has been fairly polite and appreciated being taken round the building, although he is very direct if he does not like something".

6.9 I was also referred to a large number of emails and File notes, several of which are in the appendices to David Scholes' complaint which indicate the tone taken by Cllr Leal-Bennett.

6.10 As I have not been able to interview Cllr Leal- Bennett I do not know what he may say, but I consider that the examples I have seen and the statements made by members and officers indicate that the behaviour of Cllr Leal-Bennett does not comply with the standards of behaviour that officers have a right to expect from members. It does not comply with the member/officer protocol and nor does it comply with the Code of Conduct.

7 Behaviour towards Other Members

7.1 The evidence of the members interviewed and some of the officers disclosed concerns about how Cllr Leal-Bennett behaves towards other members, including the Leader. Cllr Needham referred to Cllr Leal-Bennett as being "very damaging to the Council and the majority Conservative administration". Cllr Cowley said "he will say that something is a deal breaker in projects unless he gets his own way and behaves in a way which means that nothing is likely to happen unless he gets his own way. I have never come across anyone in all my years of experience who has that sort of attitude. It is very damaging to the operation. I ran a business with 60 staff for years and have never seen anybody behave anything like this...there appear to be no boundaries to his behaviour". She went on to say that "he behaves like this as well in the Conservative Group and challenges the Group through the process at Council, not accepting when he is advised not to do something".

7.2 Katie White said "I also think that he behaves very badly towards his fellow members, seeming to view it as his role to challenge and embarrass the leadership of his party". David Scholes referred to incidents when, at the Council meetings in February and March 2015, the Chairman asked Cllr Leal-Bennett to leave the meeting but he refused to do so, saying that he had taken his own advice and causing the Chairman at the February meeting to suspend the meeting and subsequently withdraw the item from the agenda so that Council business could continue; and at the March meeting when he was asked to leave the meeting and when he refused to do so said she would refuse to hear him and

refused to allow him to vote and he did eventually and very reluctantly leave the meetings, both times causing adverse and damaging press coverage for the Council. Indeed, it appears that Cllr Leal-Bennett issued a press release saying that "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 issue of both of these meetings related to conflict in respect of his role with HTHL and the need to declare interests.

7.3 David Scholes also referred to incidents when Cllr Leal-Bennett was first elected in May 2012 and took part in a "speed dating" event with new members and officers as part of a "get to know the Council" introduction to the Council, Cllr Leal-Bennett said straightaway to Mr Scholes "what do you think about the Leader? I think she is rubbish and I want to overthrow her". He also expressed a "bean counter" view of the Deputy Leader and the finance portfolio holder. In the view of Mr Scholes this open lack of respect for senior members from someone newly elected has a disturbing effect upon the Council. Mr Scholes also referred to the fact that Cllr Leal-Bennett was elected as chair of the Hitchin Area Committee in May 2014 with the support of the Labour Party and in opposition to the candidate nominated by the Conservative Party; action which was taken without the knowledge of his Group.

7.4 The behaviour of Cllr Leal- Bennett does not comply with the Code of Conduct which requires him to show respect and consideration for others.

8 Behaviour towards the Council

8.1 It was a common thread from the evidence of David Scholes, Anthony Roche, John Robinson, Katie White and Sharon Nahal and the members I interviewed that the behaviour of Cllr Leal-Bennett takes up a completely disproportionate amount of time at the Council. His behaviour is such now that many officers refuse to deal with him and refer everything to David Scholes or the section 151 officer, as they do not feel confident dealing with him. Katie White said "I cannot emphasis enough the way in which his behaviour affects the senior management of NHDC. We try to work with members collaboratively and largely succeed in this. Sharon Nahal said "the way that Cllr Leal-Bennett behaves puts me on my guard. I think he would always find fault with any answer given to him, he causes a lot of disruption in the Council and in terms of resources this is very significant. Up to 80% of my time can be taken up by trying to provide extra information to Hitchin Town Hall Limited".

8.2 David Scholes said "dealing with Cllr Leal-Bennett takes up a tremendous and disproportionate amount of time for me personally, which is time that I am not spending on

managing the authority and leading the officers. I have provided endlessly answers to questions from him which have been dealt with fully by other officers, including the most senior staff such as the section 151 officer. As far as I am concerned, it takes up a tremendous amount of time for other members of staff and senior elected members and is a constant pressure for the organisation". Anthony Roche said "the impact of Cllr Leal-Bennett's behaviour takes up a significant amount of officer time to deal with, especially as far as the senior officers and the chief executive are concerned. The contact that he now has with officers remains with David Scholes which is very disruptive to the running of the Council, taking up a disproportionate amount of David's time".

8.3 Cllr Needham said "Cllr Leal-Bennett causes a number of difficulties to the operation of the Council". She and other witnesses referred to the way in which Cllr Leal-Bennett has behaved as chairman of the Hitchin Area Committee, which is not a decision making committee, complaining that Cllr Leal-Bennett has used a disproportionate amount of Council resource, insisting "on full and extensive reports every meeting which takes up a considerable amount of capacity". It is alleged that he "expects all members of the officer corps to be present, at pre-meetings and the committee, even when reports are simply for noting". Cllr Cowley said "his behaviour has had a direct impact on the speed with which matters can be moved along. There were delays due to his insistence on having to go to committee twice when I think that the matter need not have gone to committee at all; let alone having to go back for approval of additional conditions".

8.4 John Robinson referred to the fact that "I believe that his behaviour and attitude has a catastrophic affect on the ability to run the Council as effectively as possible....he has by his actions put NHDC on to the defensive which has meant for example that we have had far more liaison project meetings than would normally be the case with consequential financial and other resource cost to the Council". Cllr Needham referred to the way in which Cllr Leal-Bennett used wording in the constitution to provide for more frequent meetings for the Hitchin Area Committee than the other Area Committees.

8.5 Ironically, despite Cllr Leal-Bennett's apparent pursuit of the Hitchin Town Hall project, and the intended role of HTHL in assisting the Council to develop that project, it would appear that his interventions have not been helpful, as evidenced by some of the statements above. Certainly officers were concerned about the overruns and delays caused by the behaviour both of Cllr Leal-Bennett personally and also by the remainder of the members of the HTHL board.

- 8.6 Cllr Leal-Bennett has also been vociferous in the Press and social media. In the attachments to the complaints I was provided with a number of copies of local newspaper articles in which Cllr Leal-Bennett has either personally featured or is believed by the Council to have been the source behind some acrimonious and damaging reports about the Council and the Hitchin Town Hall project. These reports portray a different picture to the statements I heard from David Scholes and the Leader, about the way in which the Council has dealt with the current economic difficulties for Council which has caused so many financial cutbacks. David Scholes said "in my view, the actions of Cllr Leal-Bennett's approach is the biggest negative factor on the whole Council due to the way in which he behaves and the impact of the negative press coverage, much caused by him upon the Council and the officers. Our customer satisfaction ratings for the Council amongst our residents are very high, as we have managed with very strenuous efforts and some excellent work from officers and members to keep improving service levels to residents, even given the very significant financial cuts that the Council has had to make over the last five years."
- 8.7 Cllr Needham said "the newspaper articles written often as a result of a brief encounter with Cllr Leal-Bennett are very damaging to the Council and the majority Conservative administration. They distract from the good work that is being done. They are damaging to the Council and bring it into disrepute, especially with the residents of Hitchin where the articles are printed and who are not always in possession of all the facts, as I am disinclined to enter into a "tit for tat" engagement with the Press. In recent consultation exercises almost 80% of the population of the district are satisfied with the way in which the Council is conducting itself, which given the major cuts we have had to make is very pleasing".
- 8.8 The evidence of the other officers tends to bear out the views about the damaging and unfavourable effect that his behaviour and his contact with the Press has upon the Council. John Robinson said "I have myself explained [to Cllr Leal-Bennett] the issue of fiduciary duty and the importance of acting in the best interests of the Council. Despite this he has directly contacted the Press on several occasions to complain about what is happening as far as the Hitchin Town Hall project is concerned and he gives, in my view, a very biased view and one which is very unfavourable towards the Council". Howard Crompton said "I live locally and have seen press comments from Cllr Leal-Bennett criticising the Council. I think these articles are one-sided and it is outrageous that the Council has to simply sit there and take it". Cllr Cowley said "as far as newspaper coverage is concerned, I think that if I was not involved with the Council I would read this and think what on earth is going

on? Why are elected members sitting there and just accepting what the officers are doing because his coverage makes it look as if the officers are out of order. I have had lots of comments from friends to this effect who have read the local press and seen what he says. It is very damaging to the Council".

8.9 Sharon Nahal said "I think his press statements are quite seriously detrimental to the Council, he tries to use the papers to put his views forwarded in a very one-sided and negative way...I think this has undoubtedly harmed the Council's reputation with the public and has brought it into disrepute...I live locally and my family have noticed the comments in the papers about the project and the Council and as they do not know the full picture they take the Press as verbatim". Katie White said "he has repeatedly involved the Press in a way which is both collectively and individually harmful to the Council and to members, including the Leader, and officers. He does this in a way which demonstrates and highlights disagreements and I believe that the electorate are entitled to query how operations are undertaken by the Council where there appears to be such disharmony. I think that his intervention with the Press paints a highly unrepresentative picture of the Council. To my mind he is not interested in positively portraying the Council or progressing the Council's priorities".

8.10 Steve Crowley said "he has caused some very negative press coverage for the Council. The newspaper coverage he has been responsible for has not helped the project. I live locally and I find people pulling my leg and saying "what are you doing" when they have read local press coverage about Hitchin Town Hall. However, Nigel Scholfield said "I think his spouting off in the press, making it clear that he was in dispute with the leadership of the Council could be damaging, but I do not think that people in Hitchin give the articles a second thought. It gives them something about what is happening about Hitchin Town Hall but I do not think they would take much notice of it. Certainly, I live locally and I have had no mention from my friends and family in Hitchin about what has been in the paper".

8.11 The Code of Conduct requires members not to conduct themselves in a way which could reasonably be regarded as bringing [their] office or the authority into disrepute. Whatever Cllr Leal-Bennett's motives may be the press statements he has made and his behaviour in meetings has undoubtedly caused adverse publicity for the Council which is likely to have brought it into disrepute.

8.12 There have also been allegations about the way in which Cllr Leal-Bennett has abused his position as a councillor. For example, John Robinson reported that Cllr Leal-Bennett had

used the HAC committee clerk to get hold of reports prior to their publication, namely those which concerned the Town Hall, and reports in which he had a direct and disclosable interest. Sharon Nahal referred to Cllr Leal-Bennett "using his Cllr badge which allows him to park in the car park to allow visitors to come in through the staff entrance and allowing them in with his Cllr pass to park in the Council car park". David Scholes also referred to Cllr Leal-Bennett "abusing his member privileges by utilising member car parking facilities such as the member car park when he was engaged on HTHL business and using his member access badge to gain access to restricted parts of the Council offices for him and others were not engaged on Council business".

8.13 I was also told of concerns about the way in which Cllr Leal-Bennett used his position as Chair of the Hitchin Area Committee both to have more meetings than expected, and to require items on the Hitchin Town Hall, in which he clearly had an interest, at every meeting. John Robinson referred to him using his position to get hold of reports, including confidential ones, prior to publication; and to setting up meetings to further the cause of HTHL.

8.14 The Code of Conduct prevents members from using their official position to secure an advantage from themselves or other persons or to use the resources of the authority improperly. It seems to me that by his behaviour Cllr Leal-Bennett offended against the Code of Conduct in this regard.

9 The Evidence of Cllr Leal-Bennett

9.1 I believe that Cllr Leal-Bennett has not cooperated with my investigation even though he has never actively refused to do so as the result of his behaviour has had largely the same effect. Records of my email exchanges with Cllr Leal-Bennett are detailed in Appendix 6. An outline of our exchanges is as follows:

9.2 I first wrote to Cllr Leal-Bennett on 25 March to inform him that I had been appointed the investigating officer into the complaints against him and that I would like to interview him at a mutually convenient date. He wrote back to me on 30 March to tell me that he had received a set of papers "about an inch thick" which he did not have the time to process at the moment. He informed me that "having attempted to bar me from numerous meetings to date it is my opinion that NHDC with the support of a few conflicted elected members, are now using the using the code of conduct to ensure that I desist from asking further difficult questions and are attempting to discredit me. I would be pleased to have a quick chat on

the telephone to go through process but do not have time this side of the election to attend an interview in view of the amount of research that I will need to undertake".

- 9.3 I wrote back to Cllr Leal-Bennett on 8 April (having been away for a week) to inform him that I hoped that we would be able to arrange a mutually convenient interview date as soon as possible and requested that he let me know why he would not be able to speak in the light of the forthcoming election and when he would be available for interview after that. I also asked him to let me see any "historic papers" which he believed relate to the matter, as referred to in his email.
- 9.4 On 13 April Cllr Leal-Bennett said "I will get back to you tomorrow". On 14 April he did indeed get back to me with a response which indicated his view that NHDC had been "attempting to "silence" me for some time...and it now seems that NHDC will go to any length to stop legitimate questions being asked concerning the conduct of their operation". He indicated to me that he would not be able to make interviews on the dates that I had suggested to him as in relation to the election campaign he was acting as a Local Council Agent and fully coordinating the election campaign, leading a team for the marginal seat in Stevenage and liaising with the agent; and he also ran his own software company and small consultancy business. Later that same day I was able to telephone Cllr Leal-Bennett and have a conversation with him in which I explained my practice when conducting investigations and asked him to make sure that we were able to set a date as soon as possible. He agreed that this was advisable and said that he would be happy to do so.
- 9.5 On 22 April I repeated my anxiousness to get a date for his interview as soon as possible and offered dates in May when I could see him so that I could draft my report by the beginning of June, also inviting him to let me know of anyone else he would like me to see and let me have copies of any documents he would like me to consider.
- 9.6 On 27 April Cllr Leal-Bennett replied to me saying that he would be requesting further information from me and suggesting that he was looking at a date of "Sunday 17 May" for interview when he would "be accompanied by various representatives". I replied saying that I was not available on Sunday, 17 May and reiterating the dates upon which I would be available asking him to let me know which dates were suitable so that we could get something in the diary as soon as possible.
- 9.7 On 5 May I asked Cllr Leal-Bennett to get back to me with a date for interview warning him that I may have to consider writing my report without him and the same day he promised me that he would give the matter his full consideration on Monday the following week.

- 9.8 On 13 May Cllr Leal-Bennett replied to my series of emails telling me that he had been reading his way through the documentation and providing a list of names who he would like me to consider. This was a list of 12 names, ranging from Peter Lilley MP to various councillors and a lawyer with him, saying that it was important that I obtained a "balanced view". This is of course, something which I was anxious to do. The same day, I asked Cllr Leal-Bennett to let me know in relation to each of the persons he would like me to interview what relevant evidence they may provide in relation to the complaints I was investigating, stressing that I was only investigating the complaints against him and not the Hitchin Town Hall project nor the Council as a whole. I asked him if it would be possible to interview them over the telephone in order to save time and costs.
- 9.9 I spoke to Cllr Leal-Bennett on 15 May. He was concerned that his potential witnesses would not receive the full attention if they were interviewed over the phone but I believed that I was able to reassure him to this effect and it is common practice to carry telephone interviews where appropriate in the interests of time and cost to the public purse. After pressing Cllr Leal-Bennett we provisionally arranged a date of Friday 22 May for interview and I wrote to him saying that I hoped to interview him at that date at 10a.m. subject to his confirmation. However, as Cllr Leal-Bennett was then unable to go ahead with an interview on that date I informed him on 20 May that I proposed to draft his report without the benefit of being able to interview him.
- 9.10 Cllr Leal-Bennett replied on 20 May saying that he would try to set a date and he had been giving the matter his attention since the elections. I offered then to delay drafting my report until Monday 1 June and said that I would consider any representations made about the issues in the complaints (which he had had services late March) which he got to me before 1st June, and that I reserved the right to change the timescale if it appeared to me to be appropriate to do so. In the event, I was, due to various pressures, unable to complete drafting my report in the timescale I had anticipated.
- 9.11 I therefore emailed Cllr Leal-Bennett on 3 June, informing him of this and of the fact that I was due to go on annual leave on 8 June until almost the end of that month. I informed him that given this was the case I felt it appropriate to allow him further time to consider the complaints against him whilst I was away and asked him to arrange with my PA a definite interview date to take place as soon as possible after my return in late June informing him that if no acceptable date had been set by then I would finalise my draft report.

- 9.12 When I returned from leave I found out that, disappointingly, Cllr Leal-Bennett had not contacted my assistant to arrange an interview and indeed the only contact that I had had from him at all was a copy of a letter he had sent to the Council's independent person raising a request for information, which had been referred to the Council to action.
- 9.13 On 14 July, I informed Cllr Leal-Bennett that I would be commencing drafting my report. I have since had no communication from him.
- 9.14 Copies of all the exchanges are set out in the appendix. I believe that I have given Cllr Leal-Bennett every opportunity to come forward to be interviewed, to provide me with evidence in terms of documentation and to let me know the details of those individuals he would like me to interview and why. He has been unable or unwilling to do any of this. Since providing me with a list of names he has not indicated any details of areas he wished me to cover with them or provided me with any contact details. I have therefore been unable to proceed.

10 Findings

- 10.1 In terms of the complaints made against Cllr Leal-Bennett under the code of conduct, whilst it is regrettable that it has not been possible to interview him I believe that the evidence I have seen, both in documentary form with the benefit of the extensive appendices provided by David Scholes and in particular, evidence contained within the interviews I have undertaken has enabled me to reach a conclusion upon the complaints.
- 10.2 In my opinion this is one of the most extreme examples that I have seen of deliberate, long standing and damaging disruptive behaviour by a member. The officers and members I interviewed came over as honest, open and entirely credible in their views. They seemed to me to be very professional, very committed people who were at a loss as to what to do in a quite impossible situation, faced with someone with whom they "were completely unable to reason" David Scholes stressed to me that they "do expect members to ask searching questions and that is entirely appropriate" but Cllr Leal-Bennett's behaviour, it seems me very clearly goes beyond being appropriately challenging as one expects members to be, and crosses over into having a "detrimental impact" on the council as a whole. Furthermore, his behaviour towards his fellow councillors, and indeed his own senior party members is, in my opinion, also unacceptable; with him "seeming to view it as his role to challenge and embarrass the leadership of this party" (Katie White). It has been established and understood for some time that senior officers and members are expected to have "thicker skins" but in my opinion the evidence shows ongoing abuse, some sheer

rudeness and a complete lack of respect from Cllr Leal-Bennett which goes far beyond what it is fair to accept anyone, even with the thickest skin, to bear.

- 10.3 With the possible exception of Nigel Schofield and Steve Crowley, whose evidence I have fully taken into account, in my opinion the evidence overwhelmingly shows a Councillor who behaves inappropriately, who appears to have little regard for the Council to which he has been elected, and to its individual members, including the Council Leader, and officers. In my opinion his behaviour to officers seems to be completely lacking in respect; it was described as "adversarial"(Anthony Roche) as "he bullies officers" (Cllr Needham). The email in which he referred to "fixing [John Robinson] for good" is entirely unacceptable in any circumstances. It gives however, a clear picture of his views which are, to my mind reprehensible.
- 10.4 The witnesses were clear that Cllr Leal-Bennett was capable of behaving politely and courteously, which indeed was my experience when I spoke to him, and it was a source of distress and immense regret to them that his behaviour – as described above in my report, is so disruptive and takes no account of their role in trying to protect the Council as a whole and minimise any risk to which it is exposed.
- 10.5 He appears to have very little respect for officers, Cllr Needham said that "he thinks the Council officers do not have the necessary skills and abilities, a view I completely disagree with". He is shown as repeatedly ignoring legal advice, especially in regard to declaration of interests. I have reviewed the advice of the Monitoring Officers and considered the opinion of Tim Straker QC and I cannot fault it. As has been explained to Cllr Leal-Bennett, where an elected member is also a director of a company they have two lots of duties, both imposed upon them and neither of which they are able to avoid. They must always act in the best interest of the Council- as a whole, although they have a particular responsibility to the constituents of their ward. They also, in the role of company director, have to act in the best interests of the Company. From time to time these interests will cause conflicts, when interests have to be declared and members with such conflicts will need to take advice from officers and, in some circumstances, withdraw from meetings.
- 10.6 I have also taken account of the impact of Cllr Leal-Bennett's behaviour on the resources of the Council, especially the amount of senior officer time that he takes up, which prevents them from focusing on the strategic issues they should be concentrating on. In similar situations Councils have sometimes had to resort to court action against a member due to the effect that members behaviour was having on the running of the Council.

10.7 It seems to me that in respect of the code of conduct in relation to sections 3.2(b), (c) and (d) which is that Cllr Leal-Bennett has failed to show consideration for others; has used behaviour that would be characterised as bullying and harassment and has used his position as an elected member to exert pressure and influence decision making by Council officers, its contractors and elected members of the Council. As well as the situation with regard to Hitchin Town hall I was referred to other incidents, - see the evidence of David Scholes- where Cllr Leal-Bennetts conduct and interests were questioned. In particular, I think that the evidence is clear that Cllr Leal-Bennett has failed to show consideration for others and the evidence in particular of Mr Scholes, Ms White and Mr Roche shows this out very clearly. It is also backed up by evidence from John Robinson, Sharon Nahal and Howard Crompton.

10.8 In respect of the allegation that Cllr Leal-Bennett has acted against Rule 3.4 by acting in a way that could be regarded as bring the office or reputation of the Council into disrepute, criticising officers directly and complicit in criticising actions of the Council, progression of the Hitchin Town Hall project and the criticism of the capability of officers I find that the evidence shows that this is proved, and the press cuttings and evidence of the witnesses I have spoken to clearly demonstrates this. The evidence shows that he has also behaved inappropriately in front of other parties; Katie White referred to a meeting in October 2013 relating to Bancroft Gardens when his behaviour disgusted a contractor who was present. Sharon Nahal referred to a meeting with an external architect when he "was very rude, questioning his professionalism and qualifications".

11 Use of Position

11.1 I find the allegations that Cllr Leal-Bennett has used his position as a member to seek to influence the progression of the Hitchin Town Hall project by lobbying officers and members and using Council resources proved. I think that the evidence from the officers is clear about this.

12 Decision Making

12.1 There has been a very clear failure to take into account the advice from the Monitoring Officer(s) and head of paid service in relation to the Declarations of Interest. I anticipate that Cllr Leal-Bennett may attempt to use the fact that the police did not proceed with a prosecution in support of his view that his non-declaration of interest was correct. I cannot agree with this. I agree entirely with the views of Katie White, Anthony Roche, David

Scholes and Tim Straker QC that the Disclosable Pecuniary Interest Regulations make it very clear that a member who is a director of a company has a pecuniary interest

12.2 One thing which Cllr Leal-Bennett has raised with me is the age of some of the evidence used to support the allegations which go back to his election in 2012. Whilst there is no time limit in the Councils code for allegations to be made within any particular time it is obviously good practice for complaints to be made as soon as possible after the acts complained of. There is however, a necessary exception in situations such as this, where the complaints relate to a pattern of behaviour, shown through a number of instances stretching back some time.

13 Conclusion

13.1 In conclusion, I believe that on the evidence I have seen Cllr Leal-Bennett has breached the Code of Conduct in respect of paragraphs

13.1.1 3.2 (a), (b) and (c);

3.4 (a), (b), and (c);

3.5, and

3.6

as alleged by Cllr Cowley and Mr Scholes.

13.2 I find that he has breached the Member/Officer Protocol. This is itself an offence against Rule 3.7 (c) of the Code of Conduct.

13.3 I also make a finding that he has breached the Code of Conduct by failing to cooperate with the investigation.

Olwen Dutton

October 2015

Appendices

- Appendix One- The Code of Conduct
- Appendix Two- The Member/Officer protocol
- Appendix Three- The Complaint by David Scholes
- Appendix Four- The Complaint by Cllr Cowley
- Appendix Five- Witness statements- David Scholes
Katie White
Anthony Roche
John Robinson
Howard Crompton
Sharon Nahal
Steve Crowley
Nigel Schofield
Cllr Needham
Cllr Cowley
Cllr Shakespeare Smith
- Appendix Six- Correspondence between the Investigator and Cllr Leal-Bennett