

GOVERNANCE AND ETHICS COMMITTEE

MINUTES OF THE MEETING HELD ON THURSDAY, 3 SEPTEMBER 2015

Councillors Present: Chris Bridges, James Cole, Lee Dillon, Sheila Ellison (Substitute) (In place of Anthony Pick), Rick Jones, Tim Metcalfe (Substitute) (In place of Jeff Beck) and Quentin Webb (Chairman)

Also Present: Sarah Clarke (Legal Services Manager), Moira Fraser (Democratic and Electoral Services Manager) and Linda Pye (Principal Policy Officer)

Apologies for inability to attend the meeting: Councillor Steve Ardagh-Walter, Councillor Jeff Beck, Councillor Graham Bridgman, Barry Dickens and Councillor Anthony Pick

PART I

8 Declarations of Interest

Councillor Jeff Beck declared an interest in Agenda Item (3), and reported that, as his interest was personal and prejudicial, he would not participate in the debate or voting on this matter.

Councillor Anthony Pick declared an interest in Agenda Item (3), and reported that, as his interest was personal and prejudicial he would not participate in the debate or voting on this matter.

Councillors Lee Dillon and Quentin Webb declared an interest in Agenda Item (3), but reported that, as their interest was personal and not prejudicial or a disclosable pecuniary interest, they determined to remain to take part in the debate and vote on the matter.

9 NPC5/14

(Councillor Jeff Beck declared a personal and prejudicial interest in Agenda item (3) by virtue of the fact that as a Member of Newbury Town Council Staff Sub-Committee, he was involved with chairing one of the Staff Grievance Committees which had previously considered elements of this complaint. As a consequence he had deemed that it would not be appropriate to participate in this meeting and had tendered his apologies and would therefore not be taking part in the debate or voting on this matter).

(Councillor Anthony Pick declared a personal and prejudicial interest in Agenda item (3) by virtue of the fact that there might be a 'public perception' that as a result of his close personal relationship with a member of Newbury Town Council's Grievance Panel his position on this Committee could be associated with the decisions of the Town Council particularly arising from his role as Mayor during the time of the reported incidents as well as his close relationship with a member of the panel. As a consequence he had deemed that it would not be appropriate to participate in this meeting and had tendered his apologies and would therefore not be taking part in the debate or voting on this matter).

(Councillor Lee Dillon declared a personal interest in Agenda item (3) by virtue of the fact that he was a member of the Liberal Democrat Group and the Subject Member was also a member of that Group. As his interest was personal and not prejudicial he was permitted to take part in the debate and vote on the matter).

(Councillor Quentin Webb declared a personal interest in Agenda item (3) by virtue of the fact that he was he had met the Subject Member on occasions in his role as a Councillor).

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As his interest was personal and not prejudicial he was permitted to take part in the debate and vote on the matter).

The Committee considered the Investigator's report (Agenda Item 3) concerning the complaint in respect of Councillor Ruwan Uduwera-Perera (Subject Member) NPC5/14.

The Independent Investigator, Liz Howlett, introduced her report to the Committee:

Liz Howlett confirmed that originally she had been asked to investigate three complaints about potential breaches of the Code of Conduct of Newbury Town Council. The three complaints were inextricably linked in context as they had arisen from the same set of events in May 2014. However, following investigation Liz Howlett had concluded that no breach had occurred in respect of complaints NPC4/14 and NPC1/15. In respect of the latter complaint she had found no evidence of any cover up but she advised that concerns which had been raised as part of that complaint regarding the failure to claim under an insurance policy and the lack of a robust procurement process had been well founded.

In respect of complaint NPC5/14 this related to two specific incidents and Liz Howlett had been asked to establish the accuracy of those incidents and to explore the evidence available:

- (1) Did Councillor Uduwera-Perera behave in a disrespectful way towards Mr. Granville Taylor on 19th May 2014?
- (2) Did Councillor Uduwera-Perera behave in an unprofessional manner, which could be interpreted by a reasonable person as being intimidating and bullying, towards Mr. Graham Hunt on 29th May 2014?

The background to the incidents was in relation to the civil litigation claim by the Town Council against Costain for the recovery of monies for damage to Victoria Park due to water extraction for the Parkway development. It should be borne in mind that this was a significant and complex issue for Newbury Town Council to deal with and it had been a steep learning curve for those involved in it. The investigator noted that not many organisations which were the size of the Town Council would have to deal with a multimillion pound civil litigation claim.

There had been issues about the way that the claim had been handled which was mainly due to the inexperience in such matters. This claim was still ongoing and therefore information in relation to it would be limited.

The meeting of 19th May 2014

A meeting had been arranged at Newbury Town Council's offices on 19th May 2014 to prepare for a meeting with Costain in Gardner Leader's offices later that morning. The main meeting was due to start at 9.00am and the pre-meet had been arranged for 8.00am. This was the first meeting with Costain on the issue of the damage to Victoria Park. It had been a major achievement in getting Costain to the negotiating table and therefore tensions were running high and nerves were frayed.

The meeting was important as discussions would take place in relation to the settlement figure and it was therefore considered to be essential that the right people were in attendance but also that there were not too many people around the table. Advice from Gardner Leader was that the fewer people in the meeting the more likely progress would be made. There had been various discussions about who should be involved in the meeting and e-mails showed that there was disagreement between Granville Taylor and Councillor Uduwera-Perera as to whether it had ever been intended, or was necessary, for Councillor Uduwera-Perera to be at the main meeting at Gardner

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Leader. Granville Taylor was clear that Councillor Uduwera-Perera had insisted that he should be at the meeting and Councillor Uduwera-Perera disputed this fact.

At the pre-meeting tensions had escalated and both Granville Taylor and Councillor Uduwera-Perera had become irritated with each other. Witnesses at the meeting corroborated the tone which had been used and confirmed that Councillor Uduwera-Perera had referred to Newbury Town Council as a 'Numpty Council'. Councillor Uduwera-Perera did not dispute that he had made this comment. His opinion was that this comment was not a breach of the Code of Conduct and that he was exercising his right to freedom of speech.

Councillor Uduwera-Perera accepted that he may have also said 'numpty officers'. Councillor Uduwera-Perera was of the opinion that this term was not insulting.. As Mr Taylor had submitted a complaint about this behaviour it could be inferred that he did feel it lacked respect and was demeaning.

Granville Taylor said that Councillor Uduwera-Perera had then stormed out of the meeting saying that 'he had better things to do'. Councillor Uduwera-Perera said that he had walked out forcefully. Liz Howlett stated that the tone, context and demeanour here was key - Councillor Uduwera-Perera had demonstrated a lack of respect and did not care that his behaviour might have been offensive.

Councillor Chris Bridges asked whether the team appointed had been inexperienced. Liz Howlett confirmed that in Councillor Uduwera-Perera's view the team were inexperienced and did not understand the case. Julian Swift-Hook clarified that the Councillors were inexperienced in dealing with a multi-million pound litigation claim. However, they all had a significant amount of experience of being a Councillor and they also had a Solicitor (Barrister) advising them.

Councillor Rick Jones noted that the remarks had been witnessed by others but it was unclear what was actually said. Liz Howlett confirmed that the only statement that Councillor Uduwera-Perera said that he did not say was 'numpty ex-prison officer' as he was certain this was something he would not say as he was an ex Police Officer. However, other witnesses had confirmed that he had said that and all witnesses had been clear that he had lost control but in a controlled way.

The meeting of 29th May 2014

On 29th May 2014 Councillor Swift-Hook (the then Leader) and Councillor Uduwera-Perera (the then Deputy Leader) were due to have a regular meeting with Mr. Graham Hunt, the then Chief Executive of Newbury Town Council. Councillor Uduwera-Perera arrived first and was questioning Mr. Hunt about why no claim had been made in 2010 against the Council's insurance policy for legal costs incurred in the dispute with Costain and he also questioned the appointment of the legal representatives for the case. However, there had been no suggestion that the Solicitors concerned had not dealt with the case adequately. Mr. Uduwera-Perera had admitted that he was 'robust and direct' in his questioning and he felt that it was his duty to hold the Chief Executive to account and therefore his actions had been justified. He had stated that he was proud of the way that he had handled the exchange. As a Councillor he felt that it was his public duty to hold the Chief Executive to account. He was of the opinion that if he had not adopted this approach the issues around Victoria Park would not have been investigated.

Liz Howlett felt that there had been a breach of the Code of Conduct which put in place a framework of working between Councillors and Officers. The relationship between Councillors and Officers should be one of mutual trust and respect. Where there were concerns about the performance of Officers these should be dealt with through the formal processes with both sides taking appropriate professional advice as necessary and they should not be dealt with by bullying or intimidation. In her opinion Councillor Uduwera-

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Perera had crossed the line and had been fully aware of and in control of what he was doing.

Councillor Chris Bridges asked if Mr. Uduwera-Perera had lost his temper? Liz Howlett responded that if one was looking at it from the outside it would appear that he did but the impression she had got from talking to Mr. Uduwera-Perera was that it was stage managed. He had stated that he had the ability to appear aggressive but be entirely in control.

Councillor Rick Jones enquired whether Newbury Town Council had disciplinary, grievance and capability procedures in place. Liz Howlett confirmed that they had. These procedures had been reviewed separately and therefore she had not considered these in her investigations and she would not therefore comment on whether or no they were fit for purpose..

Councillor Tim Metcalfe queried whether the Chief Executive was also the Responsible Finance Officer. Liz Howlett responded that generally a Head of Finance would be appointed and most Town Council's would have a specifically qualified person. In Parish Councils the Parish Clerk would be the Responsible Finance Officer. The litigation claim would normally be something that the Responsible Finance Officer would lead on, however, in 2010 Newbury Town Council had had a relatively inexperienced Finance Officer in post and the Chief Executive had therefore taken on that responsibility at the time the claim was made.

Councillor Julian Swift-Hook, on behalf of Newbury Town Council, made the following representations to the Committee:

Councillor Quentin Webb asked why Councillor Swift-Hook had been asked to represent Newbury Town Council. Councillor Swift-Hook advised that the Leader of the Town Council had not been available and following discussions with the Chief Executive it was felt that Councillor Swift-Hook would be better placed to represent the Town Council. He was Leader at the time of the incidents and that he had been appointed by the Town Council to act as their representative.

Councillor Swift-Hook advised that the issues involved in this case were very complex and it was not just a 'he said/she said' scenario. This issue went back to 2010 and was in relation to ongoing litigation. Costain undertook the water extraction in the Summer of 2010 which had had a considerable impact on Victoria Park. When the issues arose the Town Council had taken the appropriate steps. However, one thing did not happen and was in relation to a notification or claim against the Council's insurance policy for the legal costs incurred. This was something that the then Chief Executive should have done and this was found to be a failing on his part at the recent Employment Tribunal.

In relation to the scheduled meeting on 29th May 2014 Councillor Uduwera-Perera had previously discussed with Councillor Swift-Hook his concerns that the litigation claim had not been made. When Councillor Swift-Hook had walked into the meeting room that day he had encountered a very frosty atmosphere. Graham Hunt explained that there had been an issue whereupon Councillor Uduwera-Perera interrupted Mr. Hunt and started what could only be described as 'a rant'. Councillor Swift-Hook stated that he had been shocked by Councillor Uduwera-Perera's behaviour. Mr. Hunt had then said to Councillor Swift-Hook that he felt like he was being bullied. Councillor Uduwera-Perera then turned on Mr. Hunt and stated quite forcefully that 'no you are the bully' and he told him to get his coat and go home. Councillor Uduwera-Perera also stated that Mr. Hunt had 'lied to the Town Council'. Councillor Swift-Hook felt, with the benefit of hindsight, that Councillor Uduwera-Perera had been aware of what he was doing and that his demeanour had been very aggressive and bullying. Councillor Uduwera-Perera had often pointed out that he was an ex Police Officer and often presented himself as a

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champion of the under dog and stood up for equality matters etc. Councillor Swift-Hook stated that however on this occasion he had contravened the standards that he wished to be upheld.

Councillor Swift-Hook confirmed that Newbury Town Council did have comprehensive HR policies and all would have been available for Councillor Uduwera-Perera to pursue if he had wished. Graham Hunt had raised a grievance which had been fully investigated in line with policy. The Grievance Sub-Committee had considered the grievance and had determined that the behaviour of Councillor Uduwera-Perera was as had been claimed. Councillor Swift-Hook confirmed that he had not taken part in that procedure and Councillor Uduwera-Perera had also not participated.

Councillor Chris Bridges noted that Councillor Swift-Hook was at the meeting in question and he asked if he had tried to calm the atmosphere down. Councillor Swift-Hook confirmed that the meeting had been going on for 25 minutes before he had arrived. After the altercation had taken place Graham Hunt had left the room and Councillor Swift-Hook had stated his concerns about what had taken place. The interaction had lasted about two to three minutes and he had been too shocked to interject at first. In response to a query from the Chairman he confirmed that he had attempted to take the heat out of the situation.

Councillor Bridges asked for confirmation as to when the grievance had been raised. Mr. Swift-Hook confirmed that the grievance had been raised against Councillor Uduwera-Perera 5 working days after the incident.

Councillor Lee Dillon asked if Councillor Uduwera-Perera had approached Councillor Swift-Hook to look at Mr. Hunt's behaviour and his failure to make the legal claim. Councillor Swift-Hook responded that he had not. At that time the Town Council were in the middle of intense negotiations and this was the focus of every Councillor. The questions that Councillor Uduwera-Perera were raising were matters which needed to be dealt with but they were not urgent. Those issues had consequently been discussed at Group meetings at the beginning of June and that was why an investigation had been carried out.

Councillor Quentin Webb asked if every Town Councillor was signed up to the Code of Conduct. It was confirmed that that was the case.

Councillor Rick Jones asked if other Councillors had been aware of the concerns that Councillor Uduwera-Perera was expressing. Councillor Swift-Hook confirmed that all Councillors had been aware. However, the concerns in respect of the claim against the insurance policy had been expressed over a very short timeframe and at the same time the Town Council was trying to resolve the litigation claim which was of higher importance.

Councillor Rick Jones referred to the HR policies and procedures. Councillors tended to feel that they were in place generally to help staff and he asked if Councillor Uduwera-Perera would have been aware that he could use them. Councillor Swift-Hook responded that they were in place to be used by both Officers and Councillors and that Councillor Uduwera-Perera was Deputy Leader at the time and had been in attendance at Grievance Committee meetings so he would have been aware of those policies but chose not to use them.

Councillor James Cole mentioned that mitigation had been referred to and he questioned whether any mitigation was acceptable as an excuse for bad behaviour. Councillor Swift-Hook agreed that in his view there was no instance when bad behaviour would be acceptable.

Councillor Tim Metcalfe asked if the subsequent actions taken by the Town Council were prompted by Councillor Uduwera-Perera's outburst. Councillor Swift-Hook said that

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they had not been prompted by the outburst and that the actions taken would have happened in any event.

In relation to the meeting on 19th May 2015 Councillor Swift-Hook advised that there were many aspects to communication and the words actually only formed a small part. The tone, context and demeanour of how those words were spoken were all more important. Five people had been present and Councillor Swift-Hook was in no doubt that Councillor Uduwera-Perera intended to be insulting and rude. He had raised his voice and had referred to Granville Taylor as a 'numpty ex prison officer'. After the event it would have been easy to use his previous status as a Police Officer to say that he would not have referred to Granville Taylor in that way. The source of the tensions around that meeting was a telephone call the previous Thursday about who should be attending the round table meeting or not. Granville Taylor had made notes of the telephone call and he had referred to those notes on 19th May 2014 which had led to the altercation.

Councillor Quentin Webb asked if Mr. Taylor had regularly made notes of telephone calls. Councillor Swift-Hook stated that he was aware that Mr. Taylor had regularly made notes of telephone calls. The issue of the Costain meeting was important and he was not surprised that Granville Taylor had made notes in relation to that issue. The Independent Investigator had stated in her report that nerves had been frayed. Councillor Swift-Hook agreed that there had been a heightened degree of anticipation on the day and that nerves had only become frayed after the altercation and that had caused the tension.

Councillor Lee Dillon asked if Councillor Swift-Hook had asked Councillor Uduwera-Perera to attend the meeting in his role as Leader. Councillor Swift-Hook confirmed that his view was that the team should have been as lean and effective as possible and therefore it was not necessary for Councillor Uduwera-Perera to be there.

Councillor Rick Jones asked if Councillor Swift-Hook had been aware of Councillor Uduwera-Perera's low opinion of the Council – was it staff, Councillors or both? Councillor Swift-Hook felt that he was not in a position to answer that. Councillor Jones asked if there were other incidents involving Councillor Uduwera-Perera which had happened previously. Councillor Swift-Hook confirmed that there had been at least one other incident between Councillor Uduwera-Perera and Graham Hunt but none that he could recall in relation to Granville Taylor. All those involved at the Town Council were aware of Councillor Uduwera-Perera's robust approach.

Councillor Tim Metcalfe noted that Councillor Uduwera-Perera was Deputy Leader and therefore Councillor Swift-Hook's (Leader) right hand man and therefore he was surprised that Councillor Swift-Hook had not wanted him there at the meeting with Costain. Councillor Swift-Hook clarified that the appointment of the Deputy Leader was the choice of the Group and not an appointment made by the Leader. It was essential to ensure that those Councillors with the most experience were in attendance at the meeting. One other Councillor (Alex Payton) was a barrister and therefore it was felt that it would be more important to have him in the room than Councillor Uduwera-Perera. The team at the pre-meeting consisted of six people plus the barrister and a solicitor. The plan was that only three of that group would go to the round table meeting and would report back to the larger group following the meeting. Councillor Uduwera-Perera had been part of the larger group.

Councillor Chris Bridges asked if Councillor Uduwera-Perera had been involved in the issues around Victoria Park in 2010. It was noted that Councillor Uduwera-Perera was only elected in 2013.

Councillor Lee Dillon referred to page 3 of the Investigator's report where it stated that 'Alex believes that Granville Taylor complained in order to support Graham Hunt'. He asked if the meeting on 29th May 2014 had not happened would Granville Taylor still

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have come forward with a complaint. It was confirmed that the official complaint had been received by West Berkshire Council on 4th November 2014 but that a grievance had been raised internally at the Town Council before that.

The Legal Officer confirmed that another reason that the complaint had taken so long to resolve was that a number of inter-related complaints has also been received. In her view the complaint was made irrespective of the motivation for doing so. The Town Council as an entity had actually made the complaint and not Mr. Taylor. Councillor Swift-Hook agreed that the issue to determine was whether the behaviour of Councillor Uduwera-Perera had been a breach of the Code of Conduct. He admitted that the comment made by Alex Payton had caused him some concern as he had not been in the room at the time the comments were made and therefore he had concerns about the relevance of this comment. It was noted that on the same page of the report Councillor Allen had referred to Councillor Uduwera-Perera’s behaviour as ‘awful’ and ‘aggressive’.

In respect of the timeline Councillor Swift-Hook confirmed that after the incidents had occurred Officers had raised grievances which had been investigated separately by the Town Council and they had concluded that the grievances were justified. The Town Council had then referred it to the Monitoring Officer at West Berkshire Council as it had not been able to invoke the disciplinary process against a Councillor as they were not covered by the staff policies. The Committee needed to decide whether Councillor Uduwera-Perera’s behaviour towards senior staff was acceptable and the motivation for that behaviour was not an issue. An elected Councillor should not treat any member of staff in that manner in his view.

Councillor James Cole noted that the Subject Member was an ex-Councillor and he asked if Councillor Uduwera-Perera had resigned. Councillor Swift-Hook confirmed that Councillor Uduwera-Perera had resigned as Deputy Leader in July 2014 and as a Councillor in November 2014.

(The meeting was adjourned at 10.55am in order for the Committee to deliberate and make their decision).

RESOLVED that:

The Committee determined that the minimum standard of acceptable behaviour was breached by Mr. Uduwera-Perera on both 19th May 2014 and 29th May 2014. The reasons for this decision were as set out in the Investigating Officer’s report.

Sanction:

Sanctions were limited as a consequence of the legislation in the Localism Act but the Committee agreed that a formal notice should be placed in the Newbury Weekly News setting out the decision in relation to this complaint. The decision notice should also be published on West Berkshire Council’s website.

(The meeting commenced at 9.30 am and closed at 11.55 am)

CHAIRMAN

Date of Signature