

EJHLEGAL

Standards Investigation at Newbury Town Council

A report for West Berkshire Council

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A report investigating a complaint against Mr. Ruwan Uduwera-Perera. The complaint is about a potential breach of the Code of Conduct adopted by Newbury Town Council on 17th September 2012. The incidents of alleged bullying took place on 19th and 29th May 2014.

Background

I have been asked by the Monitoring Officer at West Berkshire Council to investigate a complaint about a potential breach of the Code of Conduct of Newbury Town Council numbered NPC 5/14.

Originally I was asked to investigate two further complaints namely NPC4/14 and NPC1/15. The complaints were linked in that two (NPC4/14 and NPC5/14) arose from the same set of events in May 2014 and the subsequent grievance process and the last one (NPC1/15) alleges that the treatment of those complaints “covered up” another breach.

Following the investigation I concluded that no breach had occurred in respect of NPC4/14 and NPC1/15. In respect of the latter complaint I found no evidence of any cover up but it is important to bear in mind that the concerns raised as part of that complaint regarding the failure to claim under an insurance policy and the lack of a robust procurement process were well-founded. The Advisory Panel met on the 13th August 2015. They concurred with my findings and therefore in accordance with the agreed procedures no further action will be taken on complaints NPC 4/14 and NPC 1/15.

In respect of NPC5/14:

I was instructed to establish the accuracy of the following matters and to explore the evidence available. The questions are:

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?

James Rees, an Independent Person for West Berkshire Council, considered the assessment of the complaint **NPC 5/14** by West Berkshire’s Monitoring Officer on **22nd April 2015** and concluded, in consultation with the Monitoring Officer, that an investigation was necessary to establish the facts before deciding if the Code of Conduct had been breached.

In order to undertake this investigation I have looked at a significant number of documents and interviewed a number of people. A full list of the documents considered, as well as the people interviewed, is in the appendix to this report.

I would like to thank everyone involved for their cooperation.

The Code of Conduct

Newbury Town Council adopted a Code of Conduct on 17th September 2012 under the provisions of the Localism Act 2011. Under section 28 of the Localism Act 2011 West Berkshire Council has put in place arrangements under which allegations can be investigated and decisions made on such allegations.

My starting point for this investigation is the complaint itself and identifying the potential breaches of the Code of Conduct which are alleged. The two relevant clauses from Newbury Town Council’s Code of Conduct are:

Member obligations

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory

Summary

This complaint is about the behaviour of Councillor Uduwera-Perera on 19th and 29th May 2014 which gave rise to the grievance process which was the subject of the NPC 4/14 complaint. This complaint, NPC 5/14, was lodged by Granville Taylor on behalf of Newbury Town Council. It might have reduced confusion if this complaint had been made to the Monitoring Officer as soon as the incidents in May 2014 took place. However, all parties agree that employees have the right to raise grievances and that employers are under a duty to deal with any such grievances raised in accordance with their policies and in a timely fashion. There were two incidents complained of. The first was on 19th May 2014 where Councillor Uduwera-Perera is alleged to have behaved towards Granville Taylor in a disrespectful way. The second was on 29th May 2014 where Granville Taylor alleges Councillor Uduwera-Perera behaved in a disrespectful, bullying and intimidatory manner towards Graham Hunt, the then Chief Executive. In both cases I find that there was a breach of the Code of Conduct by Councillor Uduwera-Perera.

Throughout I have referred to people as councillors where they were councillors at the time of the events and I am describing those events. Where they are no longer councillors and I am referring to them now I have not used the term councillor.

The meeting of 19th May 2014

A meeting was 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 meeting was about the recovery of monies for damage to Victoria Park. Significant damage had been caused to Victoria Park because of water extraction for the Parkway development since the summer of 2010. Expert advice had been sought on the extent of the damage and the remedial measures that would be needed. The claim against Costain, who undertook the water extraction, is ongoing.

The main meeting was due to start at about 9am and there was a pre-meeting at 8am. I have been provided with substantial email evidence of the debate taking place amongst the main people involved at the Town Council about who should be involved in the meeting and what might be discussed and what could be agreed. It was clearly a major step forward to bring Costain to the negotiating table and there was a lot of discussion around numbers, especially the advice from Gardner Leader Solicitors that the fewer people in the meeting the more likely progress would be made. Those in the meeting had to be fully prepared and confident. The emails show that there was disagreement between Granville Taylor and Councillor Uduwera-Perera as to whether to press ahead with the meeting at all. Councillor Uduwera-Perera felt Newbury Town Council was being bullied and thought the Council team did not understand the case. Granville Taylor felt that, although it was short notice, all the councillors involved had been aware of the potential date since 7th April and

that it was a huge achievement to have got this far and finally be in a position to meet face to face to discuss key issues relating to the Town Council's claim and perhaps narrow those issues down.

There is 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 Leader. Granville Taylor is clear that Councillor Uduwera-Perera insisted he must be at the meeting. He made a note during the telephone conversation and says that Councillor Uduwera-Perera said "I insist I must be there". Councillor Uduwera-Perera is clear this is not the case. Councillors Swift-Hook and Allen witnessed this altercation. The Chief Executive, Graham Hunt, asked Granville Taylor to help him with refreshments to try and defuse the situation. Councillor Uduwera-Perera then referred loudly (from the service office so in very close proximity to, and therefore easily heard by, Granville Taylor and Graham Hunt) to Newbury Town Council as a "Numpty Council". He admits he said this. He does not think he said "numpty officers". He is certain he did not say "numpty ex prison officer" because, in his words, that would have "simply been untrue". As an ex police officer he is very aware of the pecking order in the prison service (something I had been completely unaware of). Granville Taylor is clear that the words "numpty ex prison officer" were said and were clearly aimed at him. Tone, context and demeanour is everything when judging the impact these statements had. Councillor Swift-Hook thought Granville Taylor had been robust but not rude in rebutting the suggestion that he had misunderstood whether Councillor Uduwera-Perera wanted to attend the main meeting or not. He thought the volume Councillor Uduwera-Perera spoke at meant he fully intended his words to be overheard. Councillor Allen considered Councillor Uduwera-Perera's behaviour "awful" and "aggressive". Councillor Uduwera-Perera then left. According to Granville Taylor, he "marched out" saying he had "better things to do".

In my view everyone was tense before the meeting with Costain. There was a misunderstanding and neither Granville Taylor nor Councillor Uduwera-Perera wanted to back down so there was a disagreement. Granville Taylor had experienced a previous occasion of what he perceived to be bullying behaviour by Ruwan Uduwera-Perera on 19th February 2014 (also witnessed by a female member of his Services Team who was very shaken by the incident) and he was determined that this would not simply be allowed to pass as other instances seemed to. Granville Taylor is very experienced and has worked in some very difficult environments. He is well able to take care of himself and is not easily upset. He is not over-sensitive. Having interviewed both I am satisfied that the behaviour was intended to be disrespectful. Granville Taylor says Councillor Uduwera-Perera was fine provided he was not challenged but his mood could change very quickly indeed.

Alex Payton was due at the main meeting but had not been invited to the pre-meeting because Granville Taylor had not yet added him to the group email. He did not therefore witness the altercation. His view, when he arrived for the main meeting, was that the exchange had not been too serious and was just something that would need to be smoothed over in due course. Alex believes that Granville Taylor complained in order to support Graham Hunt. This might be partly true but I do think Granville Taylor was concerned at the speed and intensity of the reaction by Councillor Uduwera-Perera and that it was a pattern of behaviour not a one-off.

I should make it clear that calling Newbury Town Council “a numpty council” is not a breach of the Code of Conduct. Both councillors and the public are entitled to say what they think about a public body regardless of whether some may find this offensive. The breach only happened when the comments were aimed more personally at an officer with the clear intention that they be heard by that officer.

The meeting of 29th May 2014

On 29th May 2014 Councillor Swift-Hook and Councillor Uduwera-Perera were due to have a meeting with Mr Graham Hunt, the then Chief Executive of Newbury Town Council. Councillor Uduwera-Perera arrived first and started to question Mr Hunt about why no claim was made in 2010 against the Council’s insurance policy for legal costs incurred in the dispute with Costain. Mr. Uduwera-Perera admits that he was “robust and direct” in his questioning. There are emails on 28th May 2014 in which this issue is discussed. Graham Hunt confirms (in an email sent at 11.04) that he takes “*ultimate responsibility*”. Graham Hunt states that “*Granville attended the meeting and wrote it up*”. This was shared with Ifor and Julian (Leader and Deputy Leader at the time). Graham Hunt continued in that email that “*Any of the four could have picked up on it*”. Mr Uduwera-Perera alleges that Mr Hunt was evasive and that he claimed that he was being bullied. He acknowledges his voice is loud and that he intended to intimidate. He did not see it as bullying but holding the Chief Executive to account. As an elected representative of the public he believes he is duty bound to challenge what he sees as inappropriate. He told the Chief Executive to take legal advice and think about his future. He acknowledges that the Chief Executive was “ashen” but made clear that was his intention. This was not inadvertent, or unintended, behaviour caused by a sudden explosion of temper. This was entirely deliberate and intended to ensure that the officer was held to account for his actions.

Councillor Swift-Hook walked in towards the end of the meeting. His impression was there was a very tense atmosphere and that Councillor Uduwera-Perera was acting in a very aggressive and bullying fashion. My view is that the Chief Executive was worried at this stage about the possible implications of his mistake and was under a lot of stress.

Conclusion

To address the specific questions asked by the Monitoring Officer at West Berkshire Council:

1. Did Councillor Uduwera-Perera behave in a disrespectful way towards Mr Taylor on 19th May 2014?

My conclusion is yes. I have no doubt that the phrase “numpty council” was used and I believe the phrase “numpty officers” was also used. I accept that there are far worse words that could be used but context and tone are critical here. Mr Taylor was offended and upset by the behaviour and attitude as much as the words. He raised a grievance about this because he felt that a stand should be made and that other staff should not be treated in the same way. He may also have been supporting Graham Hunt who he had witnessed being shouted at loudly with aggressive door slamming in a previous incident in February 2014.

2. Did Councillor Uduwera-Perera behave in an unprofessional manner, which could be interpreted as being intimidating and bullying, towards Mr Hunt on 29th May 2014?

My conclusion is yes. I am in no doubt that the behaviour was threatening and intimidating and that this was entirely deliberate. Councillor Uduwera-Perera knew exactly what he was doing. He did not lose control. He wanted to find evidence of wrong-doing and believed he had found it. He believes very strongly that he was doing his public duty in pursuing it. I do have sympathy with this and can appreciate the frustration that nothing seemed to be happening about the serious accusations he was making. Nevertheless, the relationship between councillors and officers must be one of mutual trust and respect. If it is not, then the organisation as a whole suffers and relationships can break down to the point where they no longer function. Where there are concerns about the performance of officers these must be dealt with properly through formal processes with both sides taking appropriate professional advice as necessary. They should not be dealt with by bullying or intimidation.

The Code of Conduct is intended to set down minimum standards of acceptable behaviour. In my view that minimum standard of acceptable behaviour was breached by Mr Uduwera-Perera on both the 19th May 2014 and on the 29th May 2014.

Appendix

I would like to thank all those who have helped with this investigation. I have interviewed:

Lisa Poole– Inspirationhr – independent investigator for Newbury Town Council into events in 2010 and, specifically, the issue of staff competence.

Councillor Julian Swift-Hook – a member of Newbury Town Council. Deputy Leader in 2010 and Leader in May 2014. One of the subjects of the complaint NPC 1/15

Councillor David Allen – a former member of Newbury Town Council who was Deputy Leader from 2011 to 2013 and then from late 2014 until May 2015. One of the subjects of the complaint NPC 1/15

Councillor Uduwera-Perera – a former member of Newbury Town Council, Deputy Leader from May 2013 who resigned from Newbury Town Council on 25th November 2014, and the person about whom two of the complaints are made

Granville Taylor – Acting Chief Executive of Newbury Town Council. The main person running the civil claim regarding Victoria Park on a day to day basis and the person who raised a grievance about the behaviour exhibited towards him on 19th May 2014

Councillor Alex Payton – former Newbury Town Councillor elected in May 2013, involved in the Victoria Park claim

The documents considered in the context of this complaint are:

Minutes, reports and documents of the following Council meetings:

18 August 2010 – minutes of a decision of the Urgency Sub-Committee (decision made by email)

9 November 2010 – minutes of a decision of the Urgency Sub-Committee (decision made by email)

28 March 2011 – minutes of meeting of Urgency Sub-Committee

Emails relevant to these complaints:

28th July 2010 22.02 from Granville Taylor to Graham Hunt giving bullet points from meeting with Gardner Leader, specifically asking “*do we have legal insurance...may not cover total costs incurred*”, “*if insured need to clarify if we can use Gardner Leader or do they insist we must use a solicitor they must recommend*”

17 March 2011 14.30 Graham Hunt seeking decision by Urgency Sub-Committee to spend part of Victoria Park contingency on preparing a letter of claim and delegated authority to progress the litigation

21 March 2011 10.12 Graham Hunt proposing a meeting (at the request of councillors who felt this was too important a decision) rather than making a decision by email

12th May 2013 11.42 from David Allen to Ruwan Uduwera-Perera and Alex Payton providing a briefing on Victoria Park claim following their recent election

2nd April 2014 13.21 from Graham Hunt to Julian Swift-Hook copied to Anne Graham

15th May 2014 12.11 from Granville Taylor

15th May 2014 12.28 from Ruwan Uduwera-Perera

15th May 2014 14.36 from Graham Hunt

15th May 2014 15.34 from Alexander Payton

16th May 2014 11.33 from Graham Hunt

28 May 2014 10.45 CX to RUP *"In hindsight clearly a mistake not to pursue it at the time"*

28 May 2014 11.04 CX to RUP *"I am happy to take ultimate responsibility if you want me to and explain why it was overlooked at the time, if that is ever required"*.

28th May 20.04 from Ruwan to Graham Hunt questioning what "I am happy to take ultimate responsibility" looks like regarding the failure to submit an appropriate insurance claim

29th May 2014 09.16 from Graham Hunt agreeing Leaders meeting at 2pm with Ruwan Uduwera-Perera and Julian Swift-Hook

4th June 2014 17.26 from Julian Swift-Hook to Ruwan Uduwera-Perera and Alex Payton forwarding the RFO JD from August 2010 from Anne Graham

6th June 2014 17.48 from Ruwan Uduwera-Perera to Julian Swift-Hook with emails of **October 2012** between Anne Graham and insurance company confirming claim is out of time

Documents

Gardner Leader letter dated 28th July 2010 to Newbury Town Council setting out what was discussed at meeting that day

Responsible Financial Officer Job Description August 2010

Newbury Town Council press release dated 16 August 2010 giving an update on the Victoria Park claim.

Gardner Leader client care letter and terms and conditions (bottom of page 2 of terms and conditions deals with legal expenses insurance) 29 July 2011

06.07.2014 Terms of Reference for Investigation (signed on 6th July 2014 following approval by Staff Sub-committee)

24.07.2014 NWN article on potential cost to Council of not claiming under insurance policy

Standards Investigation July 2015

31.07.2014 NWN article on resignation of Councillor Uduwera-Perera as Deputy Leader of Newbury Town Council

02.04.2015 NWN article on Councillor Uduwera-Perera being cleared after first investigation

09.04.2015 Clarification of 2nd April claim in NWN by West Berkshire Council

Initial Assessment Notices for NPC 4/14, NPC 5/14 and NPC 1/15

Appraisal notes for Graham Hunt – 2007, 2008, 2009, 2010, 2011 and 2013

Standards Investigation by Richard Taylor March 2015

Witness Statement of Lisa Poole