

PUBLIC REPORT OF THE ACCOUNTS & ANNUAL RETURN WORKING PARTY FOR THE MEETING OF THE PARISH COUNCIL ON 19 SEPTEMBER 2011

INTRODUCTION

This is the Public Report of the Accounts & Annual Return Working Party (WP) for the meeting of the Parish Council on 19 September 2011. It is an edited version of the Report presented to the Finance and Policy Committee on 12 September 2011, excluding matters which have to remain confidential at this stage.

Since the F&P Meeting on 11 July the WP has been handicapped by the holiday period (all four members being on holiday at some time) and the continued intransigence of the Acting Deputy Clerk and Hedleys in providing the documentation and information requested for the WP to complete its investigations. Nevertheless the WP felt that it had sufficient information to make an interim report and recommendations at the meeting on 12 September 2011, particularly in view of recent serious developments.

BACKGROUND

The background to this internal investigation was the query into the transparency of accounting and the subsequent concern expressed about the legality of various payments made to the Clerk over a period of years, culminating in the payment of £8,500 to the Clerk on 26 November 2010.

The WP was particularly asked to investigate the payments made to the Clerk and to solicitors involved, primarily Hedleys LLP, during the financial year ending 31 March 2011. However it is necessary to recount the history of this matter since 2006 to understand what occurred.

Briefly the Clerk brought a series of grievances against the Council starting in around 2006 which resulted in a payment of £2,500 to the Clerk in April 2007, shortly before the May 2007 elections. The approval of that payment is not recorded anywhere in the minutes of the Council.

This lack of transparency and non-disclosure caused Mr Barry Hope, a Councillor until the 2007 election and later co-opted again onto the Council, to make a request for disclosure of the payment under the Freedom of Information Act. The payment was eventually disclosed following a report of the ICO dated 7 October 2009.

In the meantime the Clerk brought a further series of grievances. The situation escalated when the Clerk said that he was accused by Cllr Evans of “stalking women” at the end of a PC Meeting on 28 September 2009. Since then the Clerk pursued nine grievances, which eventually resulted in the payment of £8,500 on 26 November 2010, on the recommendation of Hedleys LLP. A payment of £350 + VAT was also made to the Clerk’s solicitors as part of the settlement and Hedleys LLP were paid fees of £650 + VAT in March 2010 and £1,950 + VAT in December 2010.

Hedleys carried out further work in threatening defamation proceedings against Councillors and members of the public after the payment to the Clerk, but in the event did not charge for this. After the elections on 5 May 2011 the Clerk made a further claim against the Council by letter dated 13 May 2011 from Thompsons, Solicitors. That letter was referred to Hedleys by the Acting Deputy Clerk on 16 May 2011, but she did not inform the Council of this until 13 June 2011. This claim has now been referred to the F & P Committee and Cllrs Jerrard and Hoskins were asked to draft an outline response to Thompsons

LEGAL MATTERS

In the course of the WP's enquiries it has become clear that there are three areas of law and practice which are important to this situation, and which have not been followed by the Council or by Hedleys.

Firstly it is unlawful for a Council to make a decision, especially a decision to spend money without sufficient (three clear working days') notice being given to all members. In practice that means that the summons to the meeting, that is the Agenda, must specify the business which it is proposed to transact in such a way that the member who receives it can identify the matters which he has to discuss. That is why for audit purposes it is necessary to check the agenda as well as the minutes of any meeting at which a decision is made. At present B & LPC is not even publishing its agendas on the website.

Secondly it is unlawful for a Council to delegate decision making to any individual councillor, and the chairman is no different. In the case of B & LPC this would apply to the past appointment of solicitors by any one individual who has decided to act on behalf of the whole council.

Thirdly a firm of solicitors can only be appointed to act for any client if it complies with Rule 2 of the Solicitors' Code of Conduct 2007. In this case the important provisions are Rule 2.02 which covers the client care obligations formerly set out in the Solicitors Costs Information and Client Care Code 1999 (1999 Code) and Rule 2.03 which covers the costs information requirements formerly contained in the 1999 Code. If a firm of solicitors does not comply with the Code in a material way it can be ordered to return all or part of its fee, and often is.

INVESTIGATIONS & ENQUIRIES MADE

As stated above the WP has encountered considerable difficulties and resistance in obtaining documents and information from the Acting Deputy Clerk and Hedleys. This is set out in the minutes of the exempt session at the F & P Meeting on 11 July 2011. That problem has continued. The WP believes it has now received most of the files between the Council and Hedleys and most of the information about the amounts and dates of the payments to the Clerk and Hedleys. Some documents are still required and the WP will obtain these as soon as it can

The WP has also obtained copies of the ICO Report dated 6 October 2009 and a confidential memorandum from an employee of the Council which had been sent to the F & P Committee (the "Whistleblowing Disclosure").

The WP has also obtained copies of the files retained by ex-Councillor Jordan about the grievances brought by the Clerk against him and Cllr Croucher. (Items 1 and 2 of the Clerk's 9 most recent grievances)

The WP has also made confidential enquiries in discussions with eight Councillors, four employees and with three members of the public. All evidence given by them was given in confidence, but all have said they are willing to make written statements, with some asking for their continued confidentiality to be protected.

The WP has also considered the agendas and minutes of all the relevant PC and F&P meetings.

RESULTS OF INITIAL INVESTIGATIONS

1. A number of employees and Councillors interviewed have reported serious and persistent bullying and intimidation by the Clerk over many years. One claimed to be 'frightened' of the Clerk.
2. All those to whom we spoke reported that the grievances brought by the Clerk against Councillors were misconceived, often trivial, and sometimes based entirely on hearsay evidence which was untrue.
3. Several witnesses said they had raised concerns with the then Chairman about the Clerk's behaviour in 2007 and 2009. However their complaints had apparently been somehow relayed to the Clerk and they had suffered recriminations from the Clerk as a result.
4. Several witnesses said that they were aware of or had witnessed intimidation and harassment of ex-Councillor Nikki Young. Many of these witnesses said that ex-Cllr Nikki Young had discussed her concerns with them over a long period of time.
5. *Confidential complaint about a current Councillor.*
6. We discovered that the Whistleblowing Disclosure was sent following consultation with the CAB and was intended to be a 'whistleblowing' exercise under the provisions of the Public Interest Disclosure Act. The whistleblower had discussed the Whistleblowing Disclosure with other employees and was attempting to expose the bullying and intimidation of staff, as well as certain financial matters.
7. There are no references to consideration of the Whistleblowing Disclosure by the F&P Committee in the Agendas or Minutes of the F&P meetings. By the time the Whistleblowing Disclosure could have been considered by the F&P Committee one of its members, Cllr Barry Hope) had sadly died. It appears that the other members of the F&P Committee took no action.

In respect of the matter concerning the payment of £8500 and Hedleys a review of the evidence obtained shows that on behalf of the Council what happened was as follows:-

1. Cllr Evans spoke to the Clerk at the end of the PC Meeting on 28 September 2009. No-one heard what was said – it was broadcast by the Clerk, with his interpretation of what Cllr Evans had said. Cllr Evans says that he did not accuse the Clerk of stalking women.
2. On 29 September 2009 Cllrs Tough, Newman and Mrs James initiated complaints about Cllr Evans to the Police and Standards Committee and Cllr Newman instructed Messrs Mackarness & Lunt to threaten defamation proceedings against Cllr Evans. He had no authority to do so.
3. On 7 October 2009 the ICO issued its Decision Notice regarding the 2007 payment of £2,500.
4. On 8 October 2009 Cllr Tough instructed Hedleys regarding this matter, with no authority to do so – he was not even Chairman at the time. This aspect was dealt with by Mr Roger Taylor and Mrs Anne Bott of Hedleys.. Hedleys did not send a “client care” letter to B&L PC, nor did they give any estimate of their costs at any time.
5. Before the end of October the claim by the Council against Cllr Evans was transferred to Hedleys without the knowledge or approval of the Council.
6. The proposed settlement with the Clerk was put to the PC Meeting on 27 September 2010. There were no documents setting this out in the Summons (Agenda).
7. The compromise agreement with the Clerk was signed on 25 November 2010 and the payment of £8,500 to the Clerk made on 26 November 2010 before the PC Meeting on 29 November 2010 at which the Press statement was read out.
8. Throughout the process Hedleys did not send a client care letter or provide an estimate of their costs. They simply sent their accounts privately to Cllr Newman at his home address.

CONCLUSIONS

During the whole of the above process Hedleys did not at any time send a ‘client care’ letter in accordance with Rule 2.02 or 2.03 of the Solicitors Code of Conduct, and the terms of their appointment was never discussed at a PC Meeting. Everything was done by some combination of Cllr Newman and Cllr Tough communicating with Mr Lugg (Director of HALC) and Hedleys. Accordingly any payments made to Hedleys were unlawful and should be returned.

The F & P Committee made no attempt to deal with the Whistleblowing Disclosure One ex-Councillor has said that he tried to raise the matter but the other members of

the F & P Committee would not address the issue. The Council had a duty to protect its employees from harassment and bullying, and still does. This gives rise to a potential claim against past and present members of the F&P committee.

The decision to settle with the Clerk was unlawful since it was never put to the Council with adequate information or notice. Therefore the payment of £8500 was unlawful. As RFO to the Council the Clerk should have known this himself.

ADVICE AND RECOMMENDATIONS

The position is obviously extremely serious for the Council, especially regarding the need to protect the employees of the Council from further intimidation or harassment.

All members of this council have a fiduciary duty to our local government tax payers. Breach of this fiduciary duty is a serious offence. It is the duty of this council not only to make informed and transparent decisions but also to manage risk. To fail to address this is to fail to address the concerns of every member of staff employed by this council. This exposes the Council unnecessarily to the risk of 'multiple tribunal claims' that the Council stood by whilst employees were bullied.

It was therefore resolved that the F&P Committee should suspend the Clerk on full pay with immediate effect while carrying out further investigation of the matters raised by employees and the financial investigations made thus far.

It was further resolved that the Council should make a complaint to Hedleys requesting a return of fees, whilst reserving the Council's position concerning a claim for compensation for negligence or otherwise.

The situation is obviously extremely serious and, in fairness to all parties, the further investigation should be carried out as quickly as possible, and progress reported to the Council on 19 September 2011. The Audit Commission and other regulatory authorities will be kept informed of progress at all times.

Cllr Don Jerrard
Chairman, Accounts and Annual Return Working Party

19 September 2011