

20 September 2007

Our ref: Standards 28.09.07  
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To: The Chairman and Members of the Standards Committee of North Hertfordshire District Council

Mr N. Moss (Chairman), Mr P. Chapman (Vice-Chairman), District Councillors David Kearns, M.R.M. Muir and L.W. Oliver, and Parish Councillors M. Goddard and R. Wornham.

You are invited to attend a

## **MEETING OF THE STANDARDS COMMITTEE**

To be held in the

**COUNCIL CHAMBER, COUNCIL OFFICES,  
GERNON ROAD, LETCHWORTH**

on

**FRIDAY, 28 SEPTEMBER 2007 at 10.00a.m.**

Yours sincerely,



David Miley  
Democratic Services Manager

**AGENDA**  
**PART I**

<b>ITEM</b>	<b>PAGE</b>
<b>1. APOLOGIES FOR ABSENCE</b>	
<b>2. NOTIFICATION OF OTHER BUSINESS</b> Members should notify the Chairman of other business which they wish to be discussed by the Committee at the end of the business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency.  The Chairman will decide whether the item(s) raised will be considered.	-
<b>3. DECLARATIONS OF INTEREST</b> To receive from Members of the Council any declarations of interest in respect of any business set out in the agenda. Members should either declare a prejudicial or personal interest and are required to notify the Chairman of the nature of any interest declared.  Members declaring a prejudicial interest should leave the Council Chamber and not seek to influence the decision on that particular item of business.	-
<b>4. HEARING FOLLOWING INVESTIGATION – TOWN COUNCILLOR RAYMOND SMALE (LETCWORTH GARDEN CITY TOWN COUNCIL)</b>	
Item 4(a) – Hearing procedure	<b>4a(1) – 4a(6)</b>
The following documents are also enclosed:	
Item 4(b) – Report of the Legal Advisor (with attachments)	<b>4b(1) – 4b(46)</b>
Item 4(c) – Report of the Investigating Officer (with attachments)	<b>4c(1) – 4c(32)</b>
<p>[Note: The attachments to report 4(c) are separately numbered – an index can be found on pages 4c(30) – 4c(32). Due to their bulk, these papers have been circulated to Committee Members and Town Councillor Smale only. However, they are available on request or can be viewed at the District Council Offices, Gernon Road, Letchworth Garden City.</p>	

**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**4a**

**TITLE OF REPORT: HEARING FOLLOWING INVESTIGATION – TOWN COUNCILLOR  
RAYMOND SMALE (LETCWORTH GARDEN CITY TOWN COUNCIL) - HEARING  
PROCEDURE**

Procedure attached.

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**NORTH HERTFORDSHIRE DISTRICT COUNCIL  
LOCAL INVESTIGATION  
HEARING PROCEDURE**

<p>1. Chair's introduction of:</p> <ul style="list-style-type: none"> <li>• Councillors sitting on Committee ;</li> <li>• Monitoring Officer &amp; legal advisor;</li> <li>• Investigating Officer; and</li> <li>• the Member, Councillor (XXXX).</li> </ul>	
<p>2. The Chair formally opens the hearing:</p> <ul style="list-style-type: none"> <li>• Summarise the complaint</li> <li>• Disclosure of personal or prejudicial interests</li> <li>• Confirms quorate</li> <li>• Outlines the procedure for the hearing</li> </ul>	
<p>3. The Chair considers whether absence affects the hearing process</p>	
<p>FINDING OF FACT</p>	
<p>4. The Chair will ask the Member if there are any findings of fact in dispute (if not move to paragraph 12)</p>	
<p><u>The Monitoring Officer's report</u></p> <p>5. The Chair will ask the Monitoring Officer to summarise his/her report and highlight any dispute with the facts raised during the pre-hearing process</p> <p>6. After the report the Chair will ask</p> <ul style="list-style-type: none"> <li>• the Investigating Officer and</li> <li>• the Member and</li> <li>• the Committee</li> </ul> <p>in turn if there are any questions concerning the report given by the Monitoring Officer</p>	

<p>7. The Member is asked if any additional points of dispute</p> <p><i>(If any new points are raised, the Member must give reasons why they were not raised in the pre-hearing process and the Committee may decide not to allow the member to challenge the facts or to adjourn)</i></p>	
<p><u>The Investigating Officer's report</u></p> <p>7. The Chair will ask if the Investigating Officer to present the written report and call any witnesses</p> <p>8. The Chair will ask</p> <ul style="list-style-type: none"> <li>• the Member, and</li> <li>• the Committee</li> </ul> <p>in turn if there are any questions of fact of the Investigating Officer or the witnesses</p>	
<p><u>The Member's case</u></p> <p>9. The Chair will ask the Member to respond to the report of the Investigating Officer and call any witnesses</p> <p>10. The Chair will ask</p> <ul style="list-style-type: none"> <li>• the Investigating Officer</li> <li>• the Committee</li> </ul> <p>if there are any questions of fact of the Member or the witnesses</p>	
<p>11. The Committee will retire to determine the findings of fact</p>	
<p><b>BREACH OF THE CODE</b></p>	
<p><u>The decision</u></p> <p>12. The Chair will ask the Member and the Investigator to give reasons why it should or should not decide that there has been a breach of the code of conduct</p> <p>13. The Chair will invite the Committee to retire to consider the evidence</p> <p>14. The Chair will announce the decision at the hearing and give reasons for the decision</p>	
<p><u>AND EITHER</u></p>	
<p><u>No failure to comply</u></p> <p>15. The Chair advises that the Member will be sent written notice</p>	

of the decision	
16. The Chair advises of any recommendations arising out of the case	
<u>OR</u>	
<u>Failure to comply</u> 17. The Chair will outline the sanctions available to the Committee 18. The Chair will ask the Investigating Officer to comment upon the sanctions available 19. The Chair will ask the Member if he wishes to comment on the investigators recommendation 20. The Chair invites the Committee to retire to consider an appropriate sanction 21. The Chair announces the decision at the hearing and gives reasons for the decision 22. The Chair advises the Member of publication of the decision and his right of appeal 23. The Chair closes the hearing	

Written decision must be issued within two weeks.

**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**4b**

**TITLE OF REPORT: HEARING FOLLOWING INVESTIGATION – TOWN COUNCILLOR  
RAYMOND SMALE (LETCWORTH GARDEN CITY TOWN COUNCIL) - PRE-HEARING  
PROCESS SUMMARY REPORT**

REPORT OF THE LEGAL ADVISOR

Report attached.

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## PRE-HEARING PROCESS SUMMARY REPORT OF THE LEGAL ADVISOR

HEARING DATE: 28<sup>TH</sup> SEPTEMBER 2007

<i>Name of the Authority</i>	Letchworth Garden City Council ('LGCC')
<i>The name of the member who the allegation has been made about</i>	Raymond Smale
<i>The name of the person who made the original allegation (or state reasons to keep identity confidential)</i>	John Webb
<i>The name of the Standards Committee Chair</i>	Nicholas Moss
<i>The name of the Monitoring Officer/Investigating Officer</i>	Frances Bogie is the Monitoring Officer. NB Jeremy N. Barnecutt, a solicitor and partner in the firm of Sharpe Pritchard, was appointed from the 30.3.07 to investigate and prepare a report to the Standards Committee.
<i>The name of the ESO who referred the matter</i>	Steven Kingston
<i>The name of the Clerk of the hearing</i>	Ian Gourlay
<i>The date the pre-hearing process summary was produced</i>	18 <sup>th</sup> September 2007

<p><i>The date, time and place when this matter will be considered.</i></p>	<p>28<sup>th</sup> September 2007 at 10.00 a.m. in the Council Chamber, North Herts District Council Offices.</p>
<p><i>Summary of the allegations</i></p>	<p>Full details of the allegations are set out in the report to the Standards Committee dated 7.8.07 ('the report'). What is set out below is not intended to be comprehensive, but only by way of summary.</p> <p>A copy of the Declaration of Acceptance of Office undertaking to observe the Parish Council Code of Conduct, signed by Town Councillor Smale on 26 May 2005, is attached, together with the Code of Conduct [<b>Appendix A – Pages 4b(9) – 4b(22)</b>].</p> <p>Failure to comply with the Code of Conduct in that Raymond Smale ('RS') :</p> <ul style="list-style-type: none"> <li>(i) Failed to treat Peter Evans ('PE'), the Town Clerk of the LGCC with respect as required by the Code of Conduct. The allegations relate to events surrounding the terms and making of an employment contract with Peter Evans in the period December 2005-February 2006. It is alleged in particular that RS failed to observe accepted council protocols, failed to discuss amendments to the proposed contract with PE, failed to discuss concerns with PE and that he contributed to a delay in the issue of the contract. (Contrary to Paragraph 2(b) of the Parish Council Code of Conduct).</li> <li>(ii) Failed to treat Peter Evans with respect as required by the Code of Conduct. The allegations relate to the placing of an advert in a local newspaper and to events in the period October 2005- April 2006. A number of failings are alleged in the process surrounding the advert and it is alleged that the behaviour towards PE by RS amounted to a failure to treat PE with respect and to bullying. (Contrary to Paragraph 2(b) of the Parish Council Code of Conduct).</li> <li>(iii) Failed to treat PE with respect in his actions as required by the Code of Conduct in relation to the attendance of PE at the LGCC office. The allegations relate to alleged accusatory statements by e-mail, a failure to raise matters with PE and a failure to refer particular matters to the Establishment Committee of the LGCC and other actions amounting to a failure to treat PE with respect. (Contrary to Paragraph 2(b) of the Parish Council Code of Conduct).</li> <li>(iv) Brought the LGCC into disrepute. It is alleged that the publication of the advert brought the Council into disrepute and that, as RS was the author of the text, his actions breached paragraph 4 of the Code of Conduct. (Contrary to Paragraph 4 of the Parish Council Code of Conduct).</li> </ul>

<p><i>The relevant section or sections of the Code of Conduct</i></p>	<p>Paragraph 2(b) – a member must treat others with respect</p> <p>Paragraph 4 – a member must not in his official capacity, or in any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.</p>
<p><i>The finding of fact in the ESO report that are agreed/or finding of facts of the Investigating Officer that are agreed</i></p>	<p>Although RS has been sent, on the 29.8.07, as part of the pre-hearing process, a form requesting that he indicate which parts of the report 'findings of fact' he disagrees with, a response in relation to such matters has not been provided.</p> <p>A copy of letter dated 29.8.07 together with the enclosures sent with it <b>are attached [Appendix B – Pages 4b(23) – 4b(32)]</b>.</p> <p>By letter dated 11.9.07, a copy of <b>which is attached [Appendix C – Pages 4b(33) – 4b(36)]</b>, RS has made various points, but not so as to clearly indicate which, if any, facts are agreed. RS has not indicated that he challenges any findings of fact in the report.</p> <p>If it transpires that there are issues that are not agreed, under the procedure for local standards hearings, a copy of which <b>is attached [Appendix D – Pages 4b(37) – 4b(44)]</b>, at paragraph 7 (b) (ii), the member can be asked to explain why points of disagreement on the facts were not identified during the pre-hearing process.</p> <p>It can be noted that the letter dated 29.8.07 also enclosed Forms B, C, D and E. None of the forms was returned.</p>

<p><i>The finding of fact in the ESO report that are not agreed/or the finding of facts of the Investigating Officer that are not agreed</i></p>	<p>Please refer to entry above. There has been no direct challenge to the findings of fact in the report.</p>
<p><i>Whether or not the member or the ESO/Investigating Officer will attend or be represented</i></p>	<p>It is understood that Jeremy N. Barnecutt, the investigating officer will attend</p>
<p><i>The names of any witnesses who will be asked to give evidence if matter goes to a final hearing</i></p>	<p>It is understood that RS wishes to call a number of witnesses, namely Cllrs Harlow, Sayers, Hodgson, Lai, Thurman and Keogh. This intention is expressed in his letter dated the 11.9.07.</p> <p>It is understood that the Investigating Officer may wish to call Councillor Webb and Peter Evans.</p> <p>Under paragraph 7 (e) of the procedure for local standards hearings, the committee are entitled to refuse to hear evidence unless they are satisfied that the witness is likely to give evidence which they need to hear in order to determine the findings as to the relevant facts within the investigator's report.</p>

*An outline of the proposed procedure for the hearing*

*Discussion of points raised in correspondence*

The hearing will follow the procedure as set out in the document 'Standards Committee, Procedure for Local Standards Hearings', a copy of which **is attached [see again Appendix D – Pages 4b(37) – 4b(44)]**. It should be noted that such procedure may be varied if, in a particular instance, such a variation is felt necessary in the interests of fairness.

### **Preliminary points**

In a letter dated 11.9.07(attached to this report) RS has raised a number of issues.

The procedure to be followed for the hearing allows for any preliminary issues to be addressed and for both parties to address the committee.

At this stage the following points can be noted in relation to the points raised in the letter dated 11.9.07:

In relation to the matters raised under the heading 'Advertisement in the Comet'

- (i) Ms Sawyer is not acting as the legal adviser to this committee.
- (ii) As the investigation report has indicated (section 4) the report was compiled by J.N. Barnecutt.

In relation to the matters raised under the heading 'Employment Status of the Clerk':

- (i) The points raised appear to relate to whether, on the facts, it could be reasonable to find that there was 'disrespect for the Clerk'. It may be that the committee would wish to consider whether that is an issue to be considered depending on any determination made as to findings of fact (under paragraph 8 of the procedure to be used at the hearing).

In relation to the matters raised under the heading 'Comments on procedure, Witnesses':

- (i) There is an allegation which appears to relate to a suggestion of an unfair investigation process, which the investigating officer has disputed in a letter of response dated 14.9.07 – **copy attached [Appendix E – Pages 4b(45) – 4b(46)]**.

	<p>(ii) As already indicated, it will be for RS to explain to the committee, if requested, the relevance of witnesses he proposes to call.</p> <p>In relation to the matters raised under the heading 'composition of the Standards Committee':</p> <p>(i) District Councillor Kearns is not sitting on the committee in relation to this matter.</p> <p>(ii) The request for referral to the Adjudication Panel at this stage is not something within the remit of this committee. If any finding is made against RS he may at that stage seek to apply to the President of the Adjudication Panel for England for permission to appeal against such a finding.</p> <p>As indicated, such matters can be considered by the Committee, having heard representations from relevant parties at the hearing.</p>
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*Report prepared by T. Cosgrove, Legal Advisor to the Committee*

**\*PART 1 – PUBLIC DOCUMENT**

**AGENDA ITEM No.**

**4c**

**TITLE OF REPORT: HEARING FOLLOWING INVESTIGATION – TOWN COUNCILLOR RAYMOND SMALE (LECHWORTH GARDEN CITY TOWN COUNCIL) – INVESTIGATING OFFICER’S REPORT**

REPORT OF THE INVESTIGATING OFFICER

Report attached.

**[NOTE: DUE TO THEIR BULK, THE ATTACHMENTS TO THE INVESTIGATING OFFICER’S REPORT HAVE BEEN CIRCULATED TO COMMITTEE MEMBERS AND TOWN COUNCILLOR SMALE ONLY – HOWEVER, THEY ARE AVAILABLE ON REQUEST OR CAN BE VIEWED AT THE DISTRICT COUNCIL OFFICES, GERON ROAD, LECHWORTH GARDEN CITY]**

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# **Report to the Standards Committee**

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**Standards Board for England**

**Local Investigation Report:**

**Investigation Number SBE14725.06**

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7 August 2007

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**Note on referencing:**

A bundle of supporting evidence has been prepared and appended to this report. The supporting evidence is divided into two parts; Part A, containing the documentary evidence relied upon and Part B, containing the statements of witnesses who have been interviewed for the purposes of this investigation.

## **1. The Allegation**

A complaint dated 18 April 2006 was received by the Standards Board for England from Councillor John Webb (JW) of the Letchworth Garden City Council (LGCC) in respect of the behaviour of Councillor Raymond Smale (RS) who was at the time the Chairman of the LGCC<sup>1</sup>.

The complaint alleges:

- Persistent mistreatment by RS of Peter Evans (PE), the Town Clerk of the LGCC, the mistreatment being the main factor leading to PE's resignation.
- Disrespect of the office of the Town Clerk by RS.
- Actions amounting to harassment by RS towards PE.
- Actions amounting to bullying by RS towards PE.
- Controlling attitudes by RS towards PE.

## **2. The Legislation**

The Standards Board for England was established by the Local Government Act 2000<sup>2</sup> (LGA 2000). Under section 58 of the LGA 2000 the Standards Board is under a duty to consider written allegations made under section 58(1) in respect of alleged failures of members of relevant authorities to comply with the authority's adopted Code of Conduct<sup>3</sup>. For the purpose of section 58(1) LGA 2000 a member of a relevant authority includes members of local authorities and parish councils<sup>4</sup>.

Written allegations which the Standards Board consider should be investigated must be referred to an Ethical Standards Officer (ESO)<sup>5</sup>. An ESO may make a finding that the matters, which are the subject of an allegation, should be referred to the Monitoring Officer (MO) of the relevant authority concerned for local investigation<sup>6</sup>. Where such a finding is made the ESO must refer the matters to the MO under section 64(2)(b) LGA 2000.

When an investigation is referred to the MO of the relevant authority, the MO is required to conduct an investigation into the allegation<sup>7</sup> and, following investigation, prepare a written report on the investigation and the findings<sup>8</sup>. The MO's written report is required to be submitted to the Standards Committee<sup>9</sup> of the relevant authority, as the body responsible for monitoring the operation of the authority's Code of Conduct<sup>10</sup>.

Section 82A(2) of the LGA 2000 provides that where an allegation is referred to the MO of the relevant authority for investigation under section 64(2) LGA 2000, the MO may delegate the performance of the functions outlined to a nominated person where he considers that he ought not to perform the investigation<sup>11</sup>. Section 82A(5) LGA 2000 permits the MO to nominate a person who is not an officer of the relevant authority.

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<sup>1</sup> Part A, pages 89-97

<sup>2</sup> Section 57(1) LGA 2000

<sup>3</sup> See Section 3. below

<sup>4</sup> Section 49(6)(e) LGA 2000

<sup>5</sup> Section 58(2) LGA 2000

<sup>6</sup> Section 59(4)(c) LGA 2000

<sup>7</sup> Regulation 5 Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 (SI No. 2003/1483) as amended by Regulation 5(3)(b) Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004 (SI No. 2004/2617)

<sup>8</sup> Regulation 5 SI No. 2003/1483 as amended by Regulation 6(7)(b) SI No.2004/2617

<sup>9</sup> A relevant authority is required to establish a Standards Committee (section 53(1) LGA 2000;). The Standards Committee of the appropriate district council serves as the Standards Committee of the parish council for which it is the responsible authority (section 55(1)(a) LGA 2000).

<sup>10</sup> Section 54(2)(b) LGA 2000

<sup>11</sup> Section 82A(2) LGA 2000

On receiving a written report from the MO, or from a person nominated by the MO under section 64(2) LGA 2000, the Standards Committee of the relevant authority must consider the report. If the report concludes that there has been no failure to observe the Code of Conduct the Standards Committee may accept the finding without a Committee hearing<sup>12</sup>. In all other cases the Standards Committee must consider the report's findings at a hearing<sup>13</sup>.

Following a hearing, the Standards Committee must make a finding as to whether the person subject to an allegation has failed to comply with the Code of Conduct<sup>14</sup>. Where a Standards Committee finds that a breach of the Code of Conduct has occurred various sanctions can be imposed on the member subject to the finding<sup>15</sup>.

A member subject to a Standards Committee finding may seek permission to appeal to the Adjudication Panel for England<sup>16</sup>. If permission is granted the appeal will be heard by an appeals tribunal<sup>17</sup>.

### **3. The Code of Conduct**

Section 50(1) and (2) of the LGA 2000 provides for a Code of Conduct governing the ethical behaviour of members of relevant authorities to be issued by the Secretary of State and the National Assembly of Wales.

Under section 51(1) and 83(1) of the LGA 2000 relevant authorities are required to pass a resolution adopting the Code of Conduct within 6 months of its issue. Furthermore, all members of a relevant authority must give the authority a written undertaking that they will observe the authority's Code of Conduct<sup>18</sup>.

In respect of parish councils the Parish Councils (Model Code of Conduct) Order 2001 (SI No. 2001/3576) was issued by the Secretary of State and came into force on 27 November 2001<sup>19</sup>. The Code of Conduct was in force at the time of the alleged behaviour subject to the complaint.

The paragraphs of the Code of Conduct for parish councils relevant to the complaint are as follows:

- Paragraph 2(b) – a member must treat others with respect.
- Paragraph 2(c) – a member must not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
- Paragraph 4 – a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

With reference to paragraph 2(b) of the Code of Conduct the Standards Board provides that a failure to treat others with respect includes unfair, unreasonable or demeaning behaviour directed by one person against another and also bullying.

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<sup>12</sup> Regulation 5 SI No. 2003/1483 as amended by Regulation (8)(a) and (b) SI No. 2004/2617

<sup>13</sup> Regulation 5 SI No. 2003/1483 as amended by Regulation (8)(a) and (b) SI No. 2004/2617

<sup>14</sup> Regulation 7(1) SI No. 2003/1483

<sup>15</sup> Regulation 7 SI No 2003/1483 as amended by Regulation 8 SI No. 2004/4617

<sup>16</sup> Regulation 9(1) SI No. 2003/1483

<sup>17</sup> Regulation 10(1) SI No. 2003/1483

<sup>18</sup> Section 52(1)(a) LGA 2000

<sup>19</sup> As amended by the Local Government Act 2000 (Model Code of Conduct) (Amendment) Order 2002 (SI No. 2002/1719)

A paragraph 2(c) breach involves any activity that seeks to put pressure on authority officers to carry out their duties in a way that is biased or partisan.

Lastly, the Standards Board provides that anything which diminishes public confidence in a member's office or their authority, or which harms the reputation of an authority, is capable of bringing that office or authority into disrepute. The test applied is whether or not the member's conduct 'could reasonably be regarded' as bringing the member's office or authority into dispute.

As a point of information the Parish Councils (Model Code of Conduct) Order 2001 (which applied at the relevant time) has subsequently been revoked by the Local Authorities (Model Code of Conduct) Order 2007 (SI No. 2007/1159) which came into force on 3 May 2007. The 2007 Order provides for a revised model Code of Conduct for members of a relevant authority.

#### **4. The Investigation and the Report**

The ESO of the Standards Board referred the complaint against RS to the MO of North Hertfordshire District Council (NHDC), Francis Bogie (FB), by a letter dated 9 May 2006. FB conducted the initial investigations and interviewed a number of Councillors as witnesses for the investigation: Karen Collings (KC), Malcolm Barnes (MB), Les Maunders (LM), Geoff Saulnier (GS), Philip Ross (PR), John Webb (JW) and PE.

For reasons of ill health, FB appointed Jeremy N. Barnecutt (JNB), solicitor and partner in the firm of Sharpe Pritchard, under section 82A(2) and (5) of the LGA 2002 on 30 March 2007 to complete the investigation and write the report to the Standards Committee. The author, JNB, interviewed RS and re-interviewed PE and compiled this report.

The report will examine the allegations against RS by evaluating evidence of RS's behaviour towards PE during his employment at the LGCC. The report will focus on several key incidents that occurred between December 2005 and March 2006. All relevant evidence, including transcripts of the evidence given by the witnesses who have been interviewed, documentary evidence and available correspondence is considered in relation to each incident. From the evidence a finding of facts will be reached upon which a determination will be made as to whether in, JNB's view, a breach of the Code of Conduct has occurred.

The determinations and conclusions drawn will be summarised at the end of the report and brief recommendations will be presented.

#### **5. Introduction to the LGCC**

The LGCC came into existence in May 2005 as a parish council following a public petition. The Council consists of 24 elected Councillors who represent the five Town Wards of Letchworth. At the relevant time the LGCC operated from a temporary office which was formerly part of the Elim Church.

The Council's Mission Statement provides that "the Town Council will promote the best interests of Letchworth Garden City for the ultimate benefit of its residents"<sup>20</sup>. The LGCC consequently deals with a diverse range of matters affecting local residents including issues of law and order, local transport, town centre redevelopment, relationships with key stakeholders and the provision of services.

To effectively address the different areas of the Council's business the LGCC established several Committees. During the period to which the allegation relates the Council's

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<sup>20</sup> Letchworth Garden City Council Website, 'About Your Town Council', ([www.letchworthgardencity-council.org.uk](http://www.letchworthgardencity-council.org.uk); as at 7 June 2007).

Committees included Planning, Establishment, Finance, Communications and Consultations, and General Purposes.

During the relevant period RS was the Chairman of the LGCC and PR and Anthony Wickman (AW) were the Vice Chairmen.

RS was a founding member of the Council who had played a major part in instigating, and who had led the campaign for, its creation. He had a popular mandate and became the first leader of an unusual body of 24 members, the majority of whom had no, or little, previous experience of acting as local councillors.

## **6. The LGCC Town Clerk Post - Background**

In July 2005 the LGCC appointed a temporary Town Clerk, Linda Travena (LS) from the Hertfordshire Association of Parish and Town Councils (HAPTC). LS left the post in September 2005 and the LGCC appointed a second temporary Town Clerk while the Council sought to recruit a permanent Town Clerk. The second Clerk, Deryck Irons, was the Town Clerk of St Ives Town Council and worked on a part time basis for the LGCC from September 2005 to November 2005.

The Establishment Committee (EC) resolved in July 2005 to appoint a permanent Town Clerk. At a meeting of the EC on 14 July 2005 a working party was appointed to deal with the recruitment process<sup>21</sup>. At a further EC meeting on 4 August 2005 a person specification, job description and advert were agreed and the working party accordingly placed an advert for the Town Clerk post<sup>22</sup>.

PE responded to the advert and completed an application form. PE was short listed and invited to attend an interview. All short listed candidates were interviewed at the LGCC office on 10 September 2005. Following the interviews, the EC reached a decision on 1 October 2005 to appoint PE and PE was formally offered the position in a letter dated 4 October 2005<sup>23</sup>. PE accepted the post and commenced employment with the LGCC on 7 November 2005.

PE gave notice of his resignation in two letters, the first to JW<sup>24</sup> and the second to RS<sup>25</sup>, both dated 1 March 2006. PE's last day of employment at the LGCC was 29 March 2006.

## **7. Investigation of the Complaint**

### **7.1 Signature of PE's Contract of Employment**

#### **7.1.1 Evidence**

Prior to PE's appointment as Town Clerk of the LGCC, the EC agreed at the meeting of 14 July 2005 to use the National Association of Local Councillors (NALC) Model Contract of Employment and Job Description (NALC Model Contract) for Town Clerks<sup>26</sup>. Clause 3 of the NALC Model Contract provides for the attachment of a job description setting out the duties of the post. The job description included at the end of the NALC Model Contract was a one-page document titled Job Specification<sup>27</sup>.

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<sup>21</sup> Part A, pages 2

<sup>22</sup> Part A, pages 16

<sup>23</sup> Part A, page 18

<sup>24</sup> Part A, page 79

<sup>25</sup> Part A, page 80

<sup>26</sup> Part A, page 2 and pages 4-13; the NALC Model Contract was taken from Part 2 of the NALC/Society of Local Council Clerks (SLCC) 'Guide to Good Employment Practice in Local Councils'.

<sup>27</sup> Part A, page 13

At the EC meeting of 4 August 2005 the Committee agreed to use the short Job Specification included with the NALC Model Contract for the permanent Town Clerk's post<sup>28</sup>. MB recalls that RS raised some concerns at the meeting suggesting that a more detailed list of the duties of the post should be used<sup>29</sup>.

PE responded to the advert placed by the LGCC for the Town Clerk position and recalls that a job specification was included in the application pack which he received from the LGCC and which he consulted when completing his application<sup>30</sup>.

The letter from the LGCC to PE, dated 4 October 2005, offering PE the Town Clerk post, stated that the contractual hours were to be 37 hours a week and that a probationary period of 6 months was to apply<sup>31</sup>. The letter further provided that the contract of employment was to be agreed between PE and the LGCC.

In mid December 2005 PE printed out a copy of the NALC Model Contract and the Job Specification as agreed by the EC containing his details and the LGCC details and delivered the documents to RS for him to sign as Chairman of the LGCC.

On 23 December 2005, which was the day RS departed for one month's holiday to the United States, RS delivered an amended version of the contract of employment<sup>32</sup> he had received from PE, signed and dated 22 December 2005, to the LGCC office. RS made the following amendments. He:

- deleted the word 'Town' in the Council's title and replaced it with 'City' so the title read 'Letchworth Garden City Council'<sup>33</sup>.
- inserted office hours of 9.00 am to 5:00 pm, Monday to Friday in clause 12.1<sup>34</sup>.
- removed the page headed Job Specification and inserted an Appendix 1, titled Job Description<sup>35</sup>.

RS did not discuss the amendments to the contract of employment with PE or the EC prior to leaving the Contract at the LGCC office. RS later asserted that PE was "quite happy" with the amendments he had made to the contract and did not raise any issues with them<sup>36</sup>.

PE was unhappy with RS's amendments and took them back to Committee. PE viewed the specified office hours as impractical given that he had to attend meetings during the working day and Council and Committee meeting in the evenings<sup>37</sup>. PE wanted the job description (which had been chosen by the Council in July 2005 and which had been titled Job Specification) to be appended to the contract and not the Job Description adopted by RS because the original document had been approved by the EC and supplied to him with the application form for the post<sup>38</sup>. PE felt that the Job Description supplied by RS was "nothing like" the description of the post that he received with the application form<sup>39</sup>.

In a letter dated 22 December 2005 from RS to JW, RS referred to the amendments he made to PE's contract and stated that they were all done "in agreement with Peter"<sup>40</sup>.

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<sup>28</sup> Part A, pages 16

<sup>29</sup> Part B, tab 1, page 7

<sup>30</sup> Part B, tab 3, pages 3-4

<sup>31</sup> Part A, page 18

<sup>32</sup> Part A, pages 23-32

<sup>33</sup> Part A, page 23

<sup>34</sup> Part A, page 25

<sup>35</sup> Part A, pages 31-32

<sup>36</sup> Part B, tab 9, page 6

<sup>37</sup> Part B, Tab 4, page 16

<sup>38</sup> Part B, tab 3, pages 5-6

<sup>39</sup> Part B, tab 3 page 6

<sup>40</sup> Part A, page 35

The NALC Model Contract with annexed Job Specification as originally agreed by the EC was placed before the EC on 9 January 2006 for approval as the terms of PE's Contract of Employment. The minutes of the meeting record that the Committee resolved to change the probation period stated in the contract to 6 months and to amend the Town Clerk's duties so as to specify that PE was to attend the LGCC office between 10.00 am and 2.00 pm when it was open to the public. PE and the Chairman were to sign the contract at the next EC meeting<sup>41</sup>. The Job Specification was also slightly amended by the EC at the meeting<sup>42</sup>. The Contract with annexed Job Specification was approved by the full Council at an LGCC meeting held on the 16 January 2006<sup>43</sup>. RS was not present at either meeting.

Following approval by full Council, the signature of PE's Contract was placed on the Agenda for the EC meeting of 25 January 2006<sup>44</sup>. It was felt diplomatic to invite RS as Chairman of the LGCC to sign PE's Contract as he had been away, rather than to invite the Chairman of the EC to do so. PE contends that a copy of his approved Contract of Employment was attached to the Agenda, however the Agenda does not record the document as being attached<sup>45</sup>.

At the meeting RS refused to sign the contract<sup>46</sup>. RS stated that the document referred to an attached Job Description but the Job Specification remained attached and in his view that resulted in the Contract being illegal<sup>47</sup>. RS asserted that the Job Specification and Job Description are "entirely different" documents<sup>48</sup> and that to engage a Town Clerk on the brief duties outlined in the Job Specification would be "catastrophic"<sup>49</sup>. RS stated that the matter would be resolved in a meeting between PE and RS the following day.

PE queries why RS did not raise his concerns over the contract before the meeting or request the removal of the item from the agenda<sup>50</sup>.

PE sought advice from the SLCC on his Contract of Employment and was informed that the contract with the annexed Job Specification was not illegal and could be used as his contract with the LGCC<sup>51</sup>.

A meeting took place between PE and RS on 26 January 2006<sup>52</sup>. The contract was not signed because RS requested that a copy of the Job Description that he had attached to the contract dated 22 December 2005 be appended to the contract.

PE informed RS that he would place the question of the duties of the Town Clerk on the Agenda for the EC meeting of 22 February 2006 for the Committee to consider<sup>53</sup> which he accordingly did.

PE was unhappy with the Job Description which RS wished to attach to his contract and sought advice from NALC. NALC informed PE that his contract of employment could be signed by the Chairman of the committee that approved the contract or the Chairman of the full council meeting that ratified the minutes of the Committee that approved the contract. In a letter dated 30 January 2006 PE relayed this advice to JW<sup>54</sup>.

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<sup>41</sup> Part A, page 44

<sup>42</sup> Part A, pages 44 and 46

<sup>43</sup> Part A, page 56

<sup>44</sup> Part A, page 49

<sup>45</sup> Part A, page 49

<sup>46</sup> Part A, pages 51

<sup>47</sup> Part A, pages 51

<sup>48</sup> Part B, Tab 8, page 10

<sup>49</sup> Part B, Tab 8, page 10

<sup>50</sup> Part B, Tab 4, page 18

<sup>51</sup> Part B, Tab 3, page 10-11

<sup>52</sup> Part A, page 56

<sup>53</sup> Part A, page 72

<sup>54</sup> Part A, page 53-54

Between 27 January 2006 and 2 February 2006 JW signed PE's contract as the Chairman of the EC Committee that approved the Contract on 9 January 2006<sup>55</sup>.

At the EC meeting of 22 February 2006 the Job Description was considered and the Committee resolved that the contract would remain as previously approved on 9 January 2006<sup>56</sup>.

### **7.1.2 Finding of Facts**

On 14 July 2005 the EC agreed to use the standard NALC contract of employment for the Town Clerk they were seeking to recruit. At the meeting of the EC on 4 August 2005 the Committee approved a job description in the format of, and with the title of, Job Specification, which was appended to the NALC Model Contract at that time.

Following a recruitment process PE was appointed the Town Clerk and commenced at the LGCC on 7 November 2005.

In mid December PE passed the contract of employment and the Job Specification in the format agreed by the EC to RS for signature as Chairman of the LGCC. RS amended the contract by adding office hours to clause 12.1 of the contract and replacing the Job Specification document with an appendix titled Job Description. RS signed the amended contract on 22 December 2005 and delivered it the following day to the LGCC office. RS did not discuss the changes he made with either PE or the EC.

PE was unhappy with the terms of the contract proposed by RS and decided to refer it back to Committee. At the EC meeting of 9 January 2006 the contract and Job Specification as agreed by the EC were placed on the agenda for approval as PE's contract of employment. The amendments made by RS were not considered by the EC and RS was not present to raise his concerns. The contract was approved by the EC with some final amendments. The Council approved PE's contract and the Job Specification at the meeting on 16 January 2006.

The signature of PE's contract by the Chairman was placed on the agenda for the EC meeting of 25 January 2006. Although PE states that the contract was included on the Agenda for the meeting, the Agenda does not refer to the document being attached and given that other documents are noted as being attached it is quite possible that RS did not receive the contract before the meeting.

At the 25 January 2006 meeting RS refused to sign the contract because the document contained the Job Specification and not the Job Description which he wanted to apply. Further, the contract itself referred to a Job Description being annexed.

Following the meeting it was agreed between PE and RS that the Job Description would be placed on the agenda of the EC meeting of 22 February 2006 for consideration of the inclusion of the document in the contract.

Following the receipt of advice that the contract as approved by the EC and the Council was legal and that it could be signed by the Chairman of the Committee that approved the contract or the full Council that ratified the decision PE informed JW. JW subsequently signed the contract as the Chairman of the EC Committee.

At the meeting of 22 February 2005 the Committee resolved to keep PE's contract in the format approved by the EC and full Council.

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<sup>55</sup> Part A, page 56

<sup>56</sup> Part A, page 73

### **7.1.3 Compliance with the Code of Conduct**

The findings above highlight two key episodes, firstly the alteration of PE's contract of employment by RS in December 2005 and secondly, RS's refusal to sign the contract at the EC meeting of 25 January 2006.

The first incident illustrates a failure by RS to observe the accepted Council protocols namely the requirement for any changes to the contract or Job Specification, previously agreed by the EC, to be approved by the EC. The Terms of Reference of the EC provided that the Committee was responsible for "setting and maintaining, and monitoring the job descriptions of the Town Clerk"<sup>57</sup>. Furthermore, RS failed to discuss the amendments with PE, ignoring the duty owed to PE which required that his Contract was to be agreed between himself and the LGCC, as provided in the letter of 4 October 2005 offering PE the post. These failings display a basic failure by RS to treat PE with respect as required by the Code of Conduct.

The second episode, the refusal by RS to sign PE's contract, also demonstrates a failure by RS to treat PE with respect. Although the evidence does not confirm that RS received the NALC Model Contract with the Agenda distributed prior to the meeting, RS should have taken steps to obtain the contract that had been approved at the meetings of 9 and 16 January 2006 from which he had been absent. On sight of the contract RS should have discussed his concerns privately with PE and, if not resolved, he should have removed the item from the agenda. RS's refusal to sign the contract at the Committee meeting demonstrated both a lack of respect for PE and a disregard for the sensitivity required when dealing with employment issues. Furthermore, RS's refusal to sign the Contract significantly delayed the issue of PE's contract of Employment and contributed to a situation in which PE did not have a contract of employment until February 2006. This fact provides further support for the finding of a failure to treat the Town Clerk with respect.

Although RS's behaviour in dealing with PE's contract of employment is a breach of paragraph 2(b) of the Code of Conduct it is not felt that the lack of respect demonstrated by RS amounted on its own to harassment or bullying of PE as alleged. Additionally, RS's actions, in relation to PE's contract, were not conducted in the public arena and are not felt to be of a sufficient magnitude to be deemed to have brought the Council into disrepute.

## **7.2 The LGCC Advertisement in The Comet**

### **7.2.1 Evidence**

In the meeting of the Communications and Consultations Committee (CCC) on 6 October 2005 the Committee recommended that a full page advertisement be placed in The Comet newspaper to provide information to the public about the work of the Council<sup>58</sup>. The CCC's decision was subsequently approved by full Council, although the exact date of the meeting is uncertain as earlier Minutes of the Council are not available.

At some time before 19 December 2005 PR provided RS with the details of a graphic designer, Ray Worbey (RW), who had done some work for a school at which he was a Governor. RS subsequently approached RW to produce the artwork for the Council advert. PR believes RS drafted the wording featured in the artwork produced by RW<sup>59</sup>.

On the morning of 19 December 2005, RS informed PE that he wished to present to members some artwork for the Council advert, after the LGCC meeting later that evening.

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<sup>57</sup> Part A, page 14

<sup>58</sup> Part A, page 20

<sup>59</sup> Part B, tab 6, page 29

RS wanted to determine which artwork design the Councillors favoured and suggested to PE that the advert could then be discussed at the CCC meeting of 4 January 2006<sup>60</sup>.

At the close of the LGCC meeting on 19 December 2005, RS announced that he had a selection of artwork prepared by a graphic designer for the Council's advert. RS requested those Councillors present to remain and look at the artwork and pass on any comments<sup>61</sup>. A general consensus was reached as to the artwork that was preferred for use in the advert. RS claims the Councillors agreed that he should inform the graphic designer of the consensus on the comments on artwork<sup>62</sup>. As the artwork was presented after the close of the meeting the consensus reached was not formally approved by the LGCC. RS accepts that the Councillors had not formally approved the advert<sup>63</sup>.

With regards to the content of the wording contained in the speech bubbles featured in the artwork some Councillors recall that no agreement was reached regarding the wording or the content of the advert<sup>64</sup>. KC suggests that RS informed her at the meeting that the text of the advert was not "fully decided"<sup>65</sup>. LM asserts that he raised concerns with the text referring to consultation with the NHDC and was told by RS that the text would be discussed when the advert was formally put forward to the Council<sup>66</sup>. RS believes the Councillors approved both the design and text of the favoured artwork at the meeting and notes that no questions were raised with the text featured in the artwork<sup>67</sup>.

It should be noted that not all Councillors stayed behind to view the artwork at the end of the meeting on 19 December 2006. Karen Collings (KC) estimates that approximately half the Councillors present at the meeting viewed the artwork<sup>68</sup>.

At some point between 19 and 23 December 2005 RS liaised with RW to inform him of the artwork that the Councillors had selected for the advert and asked him to prepare a final version of the advert. In an email dated 23 December 2005, RS informed PR that he had met with RW and that RW:

*"is going to produce the final copy now and get a firm price from The Comet and place the ad for mid Jan. 06, but before he does he will meet you for the final ok"*<sup>69</sup>.

RS stated that he felt he had left the matter with PR to expedite<sup>70</sup>. RS did not ask PE to deal with the advert or copy PE in on his email to PR. RS later stated that he expected PR to liaise with PE in his absence<sup>71</sup>.

PR later recalled that he believed that RW would send the final version of the advert back to him, to enable him to place the advert before the CCC for approval<sup>72</sup>.

At the CCC meeting of 4 January 2006 a resolution was passed to place the adverts obtained by RS in the Council office to enable all Councillors to provide feedback<sup>73</sup><sup>74</sup>. It is inferred that the Minutes refer to the artwork prepared by RW for RS in December 2005. PE

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<sup>60</sup> Part B, tab 3, page 50

<sup>61</sup> Part A, page 22

<sup>62</sup> Part B, tab 8, page 4

<sup>63</sup> Part B, tab 9, pages 8-9

<sup>64</sup> Part B, tab 1, pages 38-40; Part B, tab 2, page 45

<sup>65</sup> Part B, tab 2, page 45

<sup>66</sup> Part B, tab 1, page 40

<sup>67</sup> Part B, tab 9, page 10

<sup>68</sup> Part B, tab 2, page 45

<sup>69</sup> Part A, page 37

<sup>70</sup> Part B, tab 9, page 13

<sup>71</sup> Part B, tab 9, page 13

<sup>72</sup> Part B, tab 6, page 33

<sup>73</sup> Part A, pages 40-41

<sup>74</sup> Part A, page 41

recalls that at this meeting PR said that he would try to liaise with RW and obtain the advert in time for the next full Council meeting<sup>75</sup>.

At some point following 4 January 2006 PR contacted RW concerning the progress of the advert<sup>76</sup>.

On 22 January 2006 at 11.00 pm PR received a mobile phone text message from RW as follows:

*"Philip I have left a copy of the amended Council advert in your garage letter box this will appear in this weeks Comet on Wednesday 25 January thanks Ray"<sup>77</sup>.*

On the morning of 23 January 2006 PR opened the envelope from RW in his letter box. The envelope contained the final version of the advert prepared by RW<sup>78</sup> and a letter from RW to PR<sup>79</sup>. PR recalls that he read the letter but did not read the advert because he did not expect the advert to be contentious<sup>80</sup>.

The letter to PR from RW stated that the advert would go into The Comet in the week beginning 23 January 2006<sup>81</sup>. The final paragraph reads as follows:

*"... if this is ok – could you let me know as well – so that I can liaise with the lady at the Comet and let her know that the arrangement stands"<sup>82</sup>.*

On 24 January 2006, PR telephoned PE to determine whether PE had received a copy of the advert from RW and informed PE that the advert would appear in The Comet that week<sup>83</sup>. PE recalls that he queried whether the advert had been agreed by the Council<sup>84</sup>. PR informed PE that RW's letter suggested that the deadline for "pulling" the advert had passed<sup>85</sup>. PE requested a copy of the advert and PR agreed to leave the advert he received from RW at the LGCC office<sup>86</sup>.

PE later confirmed that PR gave him the impression during their conversation that the advert could not be "pulled" from the newspaper. PE suggests he was aware that PR had placed adverts before and took him at his word, not checking with The Comet as to whether the advert's publication could be prevented<sup>87</sup>.

On the evening of 25 January 2006 PR delivered the letter and advert to the LGCC office<sup>88</sup>.

At the meeting of the EC on 25 January 2006 PR informed the Committee that the advert had been sent directly by RW to The Comet for publication that week. PR asserts that at the meeting he read the advert for the first time along with the other Councillors<sup>89</sup>. At the meeting the Councillors voiced serious concerns that the advert had not been approved by the Council and that the text of the advert in the section headed "Consultation and more influence for you" expressed a negative view of the NHDC's approach to consultation with

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<sup>75</sup> Part B, tab 3, page 47

<sup>76</sup> Part B, tab 6, page 31-32

<sup>77</sup> Part B, tab 6, page 37

<sup>78</sup> Part A, page 52

<sup>79</sup> Part A, pages 47-48

<sup>80</sup> Part B, tab 6, page 38

<sup>81</sup> Part A, page 47

<sup>82</sup> Part A, page 48

<sup>83</sup> Part B, tab 3, page 47

<sup>84</sup> Part B, tab 3, page 47

<sup>85</sup> Part B, tab 3, page 47

<sup>86</sup> Part B, tab 3, page 48

<sup>87</sup> Part B, tab 3, page 52

<sup>88</sup> Part B, tab 6, page 40

<sup>89</sup> Part B, tab 6, page 40

the LGCC<sup>90</sup>. RS confirms that the wording of the advert was the same as the wording in the artwork he presented in December 2005<sup>91</sup>.

The advert for the LGCC appeared on page 35 of The Comet newspaper on 26 January 2006<sup>92</sup>. On the day of publication PE received several complaints regarding the advert<sup>93</sup>.

Following publication of the advert PR recalls that he had a conversation with RW during the course of which it became clear that RW had assumed the advert had been agreed by the Council and was ready to publish<sup>94</sup>.

In a letter dated 1 February 2006 from the Corporate Legal Manager of NHDC to PE, the statement on NHDC's consultation with the LGCC was described as untrue and provocative. The letter alleged the statement amounted to a breach of paragraph 4 of the Code of Conduct<sup>95</sup>.

At the CCC meeting held on 1 February 2006, PE agreed to conduct an investigation into the publication of the advert and place a report of his findings on the Agenda for the next LGCC meeting<sup>96</sup>.

PE completed an investigation into the publication of the advert and drafted a two page report which he appended to the Agenda of the LGCC meeting<sup>97</sup>. As part of the investigation PE sought advice from Hertfordshire Association of Parish and Town Councils (HAPTC) and PE asserts he also interviewed PR and RS<sup>98</sup>.

At the LGCC meeting of 20 February 2006 the Committee considered PE's report. The report concluded that RW sent the advert to the newspaper believing that he was acting on behalf of the Council following liaison with RS and PR regarding the layout and contents of the advert.

The Minutes of the LGCC meeting record that two key resolutions were passed as a result of the report's findings. Firstly, RS and PR were formally reminded by PE of their duties and responsibilities and further training was suggested if necessary<sup>99</sup>. Secondly, all Councillors were reminded by PE that they could not enter into contracts on behalf of the Council<sup>100</sup>. At no stage in the meeting did RS admit or deny responsibility for the publication of the advert or object to the resolutions passed<sup>101</sup>. RS later asserted that he did not raise any objections at the meeting because he was not aware that PE could have cancelled the advert<sup>102</sup>. The Minutes note that PR was not present at the meeting.

In a letter dated 20 February 2006 from RS to PE<sup>103</sup>, RS criticised the findings of PE's report, PE's recommendation regarding further training for RS and PR, PE's failure to discuss the investigation with RS and PR and highlights several facts as being incorrect. In relation to PE's failure to consult RS before presenting the report RS suggested that he would have consulted PE if he had written such a report and said:

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<sup>90</sup> Part A, page 52; Part B, tab 2, page 46; Part B, tab 6, page 40

<sup>91</sup> Part B, Tab 9, page 9

<sup>92</sup> Part A, page 52

<sup>93</sup> Part B, tab 2, page 46

<sup>94</sup> Part B, tab 6, page 42

<sup>95</sup> Part A, page 55

<sup>96</sup> Part A, pages 57-58; Part B, tab 3, pages 52-53

<sup>97</sup> Part A, pages 57-60

<sup>98</sup> Part B, tab 3, pages 56-57

<sup>99</sup> Part A, page 62

<sup>100</sup> Part A, page 62

<sup>101</sup> Part A, page 76; Part B, tab 1, pages 50-51

<sup>102</sup> Part B, tab 9, page 12

<sup>103</sup> Part A, page 65-66

*“the whole issue would not have been an issue if the Clerk had exercised his duties to offer advice to Councillors on awareness of correct procedures from start to finish (rather than after the event) and that training might be required<sup>104</sup>”.*

Following the presentation of PE’s report at the LGCC meeting The Comet ran a front page story on the report’s findings<sup>105</sup>.

At some point after 20 February 2006 and before 28 February 2006 PR telephoned PE to air his disagreement with the report’s contents and his upset at the story run in The Comet. PR requested a formal apology from PE and informed PE that he wanted Minute FC06/21 of the meeting of 20 February 2006 to be withdrawn<sup>106</sup>. PR initially gave PE a 24 hour deadline within which to apologise. PR was forced to extend this timeframe when PE went on sick leave. PR did not make an official complaint against PE although he made a number of formal demands for an apology.

In a letter dated 21 February 2006, from LM to PE, LM informed PE that he believed that by failing to register an interest in Minute FC06/21 and voting against the motion, RS had breached the Council’s Code of Conduct<sup>107</sup>.

On 28 February 2006 PR sent an email to all councillors informing them that he had requested a written apology from PE<sup>108</sup>. In a letter from RS to PE, dated 28 February 2006, RS asked PE to apologise to himself and PR for the contents of his report<sup>109</sup>. RS’s letter accused PE of “allowing” the advert to be published and blaming RS and PR so as to “conceal” his own role in the event<sup>110</sup>.

In a further email dated 28 February 2006 to all councillors RS suggested that PE was responsible for the publication of the advert because he failed to act once he had been informed of the advert by PR<sup>111</sup>.

PE recalls that in an email received from RS, RS accused him of deliberately not stopping the advert from going into The Comet in order to embarrass the Council<sup>112</sup>. There is no documentary evidence of this email.

On 2 March 2006 PR emailed PE a drafted letter of apology for PE to sign<sup>113</sup>.

In a letter dated 6 March 2006 from PE to PR, PE apologised for the report and clarified that PR’s only involvement in the advert’s publication was informing RS of the name of the graphic designer and receiving the final draft of the advert from RW<sup>114</sup>. PR acknowledged that PE’s letter of apology was not the one that he had drafted for him to sign but that it contained most of what he requested in that letter<sup>115</sup>.

In an email dated 17 March 2006, from RS to PE, RS stated:

*“I understand Philip has received an apology from you. I now require mine<sup>116</sup>”.*

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<sup>104</sup> Part A, page 65

<sup>105</sup> Part B, tab 6, pages 47-48

<sup>106</sup> Part B, tab 6, page 55-56

<sup>107</sup> Part A, page 68-69

<sup>108</sup> Part A, page 75

<sup>109</sup> Part A, page 78

<sup>110</sup> Part A, page 78

<sup>111</sup> Part A, page 75-76

<sup>112</sup> Part B, tab 3, page 64

<sup>113</sup> Part B, tab 3, page 60; Part B, tab 6, pages 51-52

<sup>114</sup> Part A, page 81

<sup>115</sup> Part B, tab 6, page 56

<sup>116</sup> Part A, page 82

PE responded on 17 March 2007 stating that he was not sure what RS wanted him to apologise for<sup>117</sup>. In a further email from RS to PE on 17 March 2007, RS claimed his complaint is “naturally similar” to PR’s and that an apology in similar terms to PE’s apology to PR would suffice<sup>118</sup>. Further RS claimed he had issued an internal complaint.

RS later contended that he requested an apology from PE because PE’s report failed to deal with the fact that PE could have “pulled” the advert before it was published in The Comet<sup>119</sup> and RS was on annual leave at the time the advert was published<sup>120</sup>.

In a letter dated 20 March 2006 from PE to RS, PE stated that it was an error on his part, following his conversation with PR regarding RW’s letter, not to have checked with The Comet that it was too late to prevent the advert being published<sup>121</sup>. PE apologised for not sending a draft copy of the report to RS and asserted that he did not intend his recommendations to undermine RS<sup>122</sup>. RS has since stated that, although the apology was not in the words he would have liked, he accepted PE’s apology letter<sup>123</sup>.

At the LGCC meeting held on 3 April 2006 the Minutes record that PR received an apology from PE which was appended to the Agenda circulated to all Councillors<sup>124</sup>. The Minutes refer to RS making a similar exculpatory statement. RS stated at the meeting that he had received an apology from PE. However, KC recalls that on requesting sight of RS’s apology, RS informed her that he had left it at home<sup>125</sup>. PR proposed that Minute FC0621a) should not apply and a resolution was passed to that effect<sup>126</sup>. Councillors report that several councillors did not vote on the resolution because the Minute FC0621a) related to both PR and RS and they felt that the Minute remained applicable to RS<sup>127</sup>.

In the interview for this investigation RS denied instructing RW to send the advert to the newspaper<sup>128</sup>. Furthermore, although there is little available evidence regarding the text of the advert, RS later denied drafting the advert’s text stating that he does not know where the wording came from or who was responsible for the wording<sup>129</sup>. However, PR asserts that RS drafted the wording of the advert<sup>130</sup>.

## 7.2.2 Finding of Facts

The CCC passed a resolution to place an advertisement in The Comet at the Committee meeting of 6 October 2005, ratified by the LGCC at its next meeting.

RS instructed RW to produce the artwork for the Council advert and he produced a set of artwork designs in December 2005. At the close of the LGCC meeting held on the 19 December 2005 RS presented RW’s artwork to some Councillors. Of the Councillors that remained to view the artwork a consensus was reached as to the favoured design and it was agreed that RS would inform RW of the chosen design. Although there was discussion with individual councillors regarding the text appearing in the artwork, no agreement was reached regarding the wording to be used in the advert.

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<sup>117</sup> Part A, page 82

<sup>118</sup> Part A, page 82

<sup>119</sup> Part B, tab 9, pages 8 and 11

<sup>120</sup> Part B, tab 8, page 5

<sup>121</sup> Part A, page 83

<sup>122</sup> Part A, page 83

<sup>123</sup> Part B, tab 9, page 12

<sup>124</sup> Part A, page 81; Part A, pages 85-86; Part A, pages 87-88. It is important to note that the full Council meeting of March 2006 was delayed to the 3 April 2006

<sup>125</sup> Part B, tab 2, page 52

<sup>126</sup> Part A, page 88

<sup>127</sup> Part B, tab 7, page 7; Part B, tab 2, page 52

<sup>128</sup> Part B, tab 9, page 12

<sup>129</sup> Part B, tab 9, page 9

<sup>130</sup> Part B, tab 6, pages 29, 59 and 60

Following the LGCC meeting, RS informed RW of the favoured artwork and instructed him to prepare, what he describes in the email to PR dated 23 December 2005, as a “final copy” of the advert. After sending an email to PR to explain that RW was producing the final version of the advert, RS then departed on annual leave and was away from 23 December 2005 to 23 January 2006.

At the meeting of the CCC on 4 January 2006 the Committee agreed that the artwork for the advert previously presented by RS should be placed in the LGCC office. PR also suggested that he liaise with RW to obtain the final version of the advert for Council approval. PR contacted RW regarding the production of the advert, although the details of the conversation are not clear.

On 22 January 2006 RW left the advert with a letter for PR in PR’s garage letter box and informed PR that he had done so by text message. On 23 January 2006, PR opened the letter which informed him that the advert had been sent to The Comet and would appear in the paper in the week commencing 23 January 2006.

On 24 January 2006 PR telephoned PE to inform him that the advert had been sent to The Comet and, following a request from PE during the course of the conversation, PR delivered the advert and letter from RW to the LGCC office on the evening of 25 January 2006.

At the meeting of the EC on 25 January 2006, the advert was presented and PR informed the Committee that the advert had been passed directly to The Comet by RW. The Councillors expressed concern that the advert had not been approved by the Council and, on sight of the advert, at the content of the section headed “Consultation and more influence for you”.

On 26 January 2006 the LGCC advert appeared on page 35 of The Comet newspaper.

At the CCC meeting of 1 February 2006 the Committee instructed PE to conduct an investigation into the advert’s publication and to report the findings at the LGCC meeting of 20 February 2006. On conducting the investigation PE had telephone and email exchanges with PR, however, there is no evidence that he conducted formal interviews with PR or RS as part of the investigative process.

PE presented his report at the LGCC meeting of 20 February 2006 and his recommendations were passed as resolutions. RS did not raise any objections at the meeting. The apologies record that PR was absent from the meeting.

RS first criticised PE’s report and recommendations, PE’s failure to consult him or PR, and PE’s failure to provide a draft report to him and PR, by letter dated 20 February 2006.

The Comet ran a story containing details of the conclusions and recommendations of PE’s report following the LGCC meeting.

On his return from holiday PR demanded an apology from PE and on 28 February 2006 emailed all Councillors to inform them that he had requested an apology.

In a series of correspondence from RS to PE (dated 28 February 2006 to 17 March 2006) RS also demanded an apology from PE, to him and PR, for the contents of his report and the resolutions passed at the LGCC meeting of 20 February 2006. The correspondence contains references to PE being responsible for the publication of the advert in failing to act to withdraw the advert when alerted by PR to the fact that RW had sent it to The Comet.

PE responded substantially to RS’s correspondence in a letter dated 20 March 2006. PE apologised to RS for failing to provide a copy of the report before it was presented to the LGCC, explained that his recommendations were not intended to undermine him and

admitted that he should have contacted The Comet as soon as he was informed by PR of the situation.

PE apologised to PR in a letter dated 24 March 2006 stating that PR's role in the publication of the advert was confined to providing RS with RW's contact details and receiving the final version of the advert from RW.

At the LGCC meeting of 3 April 2006 PR presented his apology to the Council. RS also stated that he had received an apology although he failed to present this. PR proposed that the recommendation suggesting further training for RS and PR, passed at the meeting of 20 February 2006, be withdrawn as no longer applicable. A resolution that the relevant Minute no longer apply was passed by a majority of votes.

### **7.2.3 Compliance with the Code of Conduct**

In examining the background to the publication of the LGCC advert in The Comet a number of failings emerge as underlying errors that resulted in the publication of the controversial content of the advert.

The first error was that PE (and not RS) should have been asked to liaise with, and contract with, any outside contractors. If this had been done PE would have ensured that proper protocols were followed and that all members had the opportunity to consider and approve what was, in effect, a contentious piece of information "trailing" or advertising the work of the Council.

No authority had been formally given by the CCC, the Committee responsible for dealing with communications in the Press<sup>131</sup>, or by the Council to place this particular advert, neither had the terms of the advert been formally approved by the Council. RS accordingly had no authority to issue instructions to RW or to place the advert in The Comet.

Another error occurred over the wording of the advert. If the text relating to consultation with the NHDC had not been contentious the publication of the advert would have been an internal problem and the Council would have avoided public embarrassment. Consequently, the Councillor(s) who drafted the wording must bear a significant part of the responsibility for the advert's ramifications. Although there is no documentary evidence, from the established facts it appears that RS drafted the wording of the advert. The wording appeared in the artwork RS presented in December 2005, at which point, no other Councillor had liaised with RW. Given that RS could himself not offer an alternative explanation when questioned and the unlikely probability that RW, not a Council member, would have drafted the wording, it seems most plausible that RS was the author. The wording also bears great similarity to the wording of a letter RS and PR wrote to another newspaper on 27 November 2005<sup>132</sup>.

The next failing concerns the instructions given to RW in relation to the advert. It is clear that some misunderstanding must have occurred between RS and RW. As the person giving the instructions, some responsibility for this must lie with RS. Any contractor should have been told in clear terms that the advert needed to come back to the Council for approval before it was placed with a newspaper. In the email from RS to PR dated 23 December 2005, RS stated that RW was to "place" the advert for mid January but should first meet PR for a final okay. It seems likely that RW believed that RS had, by instructing him to "place" the advert with the newspaper (if that was the phrase used to RW), instructed him to send the advert to The Comet and misunderstood the requirement to check the advert with PR first.

Lastly, there was a limited time frame within which it would have been possible to withdraw the advert from publication in The Comet, that was not recognised. PR received a copy of

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<sup>131</sup> Part A, page 43

<sup>132</sup> Part A, page 21

the advert from RW on 22 January 2006 and on realising that the advert had been forwarded to The Comet, informed PE of the situation on 24 January 2006, and only passed the advert to PE on the evening of 25 January 2006. A crucial opportunity may thereby have been missed to contact The Comet to check whether the advert could be withdrawn. PE also failed to contact the newspaper to confirm whether the advert could be withdrawn when he realised on 24 January that it had not been approved by the Council. He was not however, aware at this time of the contentious contents. PE has accepted this failure.

On examination of the recited errors above, it is evident that RS was responsible for a number of the key failings that led to the publication of the advert. RS's behaviour towards PE amounted to an attempt to divert attention away from his role in the advert's publication.

Following PE's presentation of the report on the advert's publication, RS's email and written correspondence commenced with largely unfair criticisms of PE's report and recommendations and progressed into aggressive exchanges that openly sought to blame PE for the advert when PE was responsible only for a minor failure on his part to contact the newspaper. Further, RS sought to inform other Councillors of his dissatisfaction with PE's report and his view that PE was culpable for failing to withdraw the advert before publication. This behaviour amounts to a failure to treat PE with respect and, more seriously, the repeated demands for an apology and the circulation of accusing emails to other Councillors amount, in the writer's opinion, to bullying of PE by RS. RS's behaviour appears to constitute a serious breach of paragraph 2(b) of the Code of Conduct.

Furthermore, the publication of the advert in The Comet brought the Council into disrepute and given RS's role as author of the advert's text, his actions breached paragraph 4 of the Code of Conduct.

No express criticism is made of PR in this report because the author has not investigated his conduct. It could, however, be said that PR made a number of forceful demands for an apology which might have been viewed as having been made in an aggressive manner.

## **7.3 The 2006 Annual General Meeting**

### **7.3.1 Evidence**

In mid December 2005 PE sent a notice of the dates of Council and Committee meetings for the January - May 2006 period to all Councillors by email, and to those without email access, by post for their approval<sup>133</sup>. PE also placed the schedule of dates on the notice board in the LGCC office<sup>134</sup>. PE asserts that in taking these steps he complied with the Council's procedure for dealing with meeting dates in operation at that time<sup>135</sup>.

The list of dates provided that the Annual General Meeting (AGM) was to be held on Monday 15 May 2006<sup>136</sup>.

PE drew up the schedule of meetings using the 5-week formula adopted before he joined the Council<sup>137</sup>, also taking into account the requirement, agreed by the CCC at the meeting of 6 October 2005, to hold full Council meetings on Mondays<sup>138</sup>.

PE recalls that he allowed a two week period following the circulation of the list for Councillors to let him know if they had any difficulties with any of the dates. PE initially

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<sup>133</sup> Part A, page 38; Part B, tab 3, page 27; Part B, tab 4, pages 10-11

<sup>134</sup> Part B, tab 4, page 11

<sup>135</sup> Part A, page 71

<sup>136</sup> Part A, page 38

<sup>137</sup> Part A, page 105; Part A, page 71

<sup>138</sup> Part A, page 19-20

stated that no Councillors queried the dates in the two weeks period<sup>139</sup> but he later recalled that Les Maunders (LM) did notify him at the time that he would not be able to attend the AGM<sup>140</sup>. PE subsequently confirmed that the dates did not clash with District Council area meetings and then forwarded the dates to the local press, NHDC, Hertfordshire County Council and the Letchworth Garden City Heritage Foundation.

RS does not recall receiving the notice of the dates in December 2005 and asserts that he first became aware of the date of the AGM in January 2006. As mentioned earlier RS was on annual leave from 23 December 2005 to 23 January 2006.

In an email dated 2 February 2006, RS's wife Angela Smale (AS), requested PE to inform her whether it would be possible to change the date of the AGM<sup>141</sup>. PE states that he understood that RS would be away from the Council on this date for his son's wedding<sup>142</sup>. PE responded that he would look into the matter<sup>143</sup>.

MB recalls that PE sought his advice in relation to changing the date of the AGM and asserts that he advised PE that the date should not be changed if it had been agreed by Council and published externally<sup>144</sup>.

PE later told RS that the date should not be changed because it had been forwarded to external bodies<sup>145</sup>. PE suggested that he would be prepared to send a note to all Councillors informing them that there had been a request to change the date of the AGM.

In an email dated 21 February 2006, AS asked PE to

*"confirm that you either have notified us of the change of date or are about to do so"*<sup>146</sup>.

PE responded to AS in an email, also on 21 February 2006, that he would put a note to Councillors with the Agendas for the meeting on 1 March 2006<sup>147</sup>.

PE recalled a further conversation with RS where it became clear that RS wished to attend the AGM to be a part of the handover of the Chair. PE advised RS that his attendance was not necessary and that he could prepare a statement to be read out in his absence<sup>148</sup>.

PE sent a Memo, dated 23 February 2006, to all Councillors stating that he had been approached by a Councillor to change the date of the AGM on 15 May to 24 May 2006<sup>149</sup>. The Memo asked Councillors to advise PE whether they could attend the new date. RS later suggested that the Memo "disguised and misrepresented the matter" because he wished the date to be made an Agenda item and considered at the LGCC meeting because it had not previously been agreed by Council.

In an email dated 26 February 2006 from RS to PE, RS queried (for the first time) whether the Council had been consulted on the date of the AGM and, if so, whether they had agreed the date before it was circulated to outside bodies<sup>150</sup>. PE responded to RS's concerns in an email dated 27 February 2006 stating that he had followed the Council's 5-week formula in

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<sup>139</sup> Part A, page 71

<sup>140</sup> Part B, tab 4, page 10

<sup>141</sup> Part A, page 77

<sup>142</sup> Part B, tab 4, page 12

<sup>143</sup> Part B, page 77

<sup>144</sup> Part B, tab 1, page 31

<sup>145</sup> Part B, tab 4, page 11

<sup>146</sup> Part A, page 70

<sup>147</sup> Part A, page 70

<sup>148</sup> Part B, tab 3, page 34; Part B, tab 4, page 12

<sup>149</sup> Part A, page 74

<sup>150</sup> Part A, pages 70-71

producing the list of dates and allowed a two week period for Councillors to notify him of any difficulties, following which he passed the dates on to the usual external organisations<sup>151</sup>.

RS emailed PE on 27 February 2006 to inform him that he could not attend the meeting on 15 May 2006 and stated that he did not accept the explanation in PE's email<sup>152</sup>. He said that he believed the date of the AGM had been set without the agreement of the Council or consultation with Councillors<sup>153</sup>. As a solution to the problem, RS suggested that the date of the meeting be placed on the Agenda for the LGCC meeting on 3 April 2006<sup>154</sup>.

Confirmation of the dates of the meetings for the remainder of 2005/06, including the AGM, was placed on the Agenda for the LGCC meeting of 3 April 2006<sup>155</sup>. At the meeting RS presented a proposal to change the date of the AGM<sup>156</sup>. KC recalls that the Council passed a resolution to change the AGM but a unanimous decision was not reached because a few Councillors did not want the date changed<sup>157</sup>.

### 7.3.2 Findings of Fact

At some point in December 2005 PE produced and circulated a list of dates for 2006 Council and Committee meetings, including the AGM, which was scheduled for 15 May 2006. The list was also placed on the LGCC notice board. Following dissemination of the list, as only one Councillor appeared to be unable to attend one of the meetings and there were no clashes with area meetings PE forwarded the dates on to key external bodies.

PE calculated the dates by the formula approved by the Council and followed the protocol he believed was in place for approving meeting dates. However, PE did not meet formally with RS, as Chairman, to confirm the dates or place the list of dates on the Agenda of the next LGCC meeting for Council approval.

RS considered the list of meeting dates when he returned from annual leave in January 2006. It is not possible to ascertain whether it would have been possible for RS to consider the dates prior to his departure on leave in December 2005 because the exact date of circulation of the dates is not known.

AS requested PE to inform her whether the date of the AGM could be changed in an email of 2 February 2006. RS subsequently spoke to PE, between 2 and 21 February 2006 to request that the date be moved back a week because he could not attend the meeting on 15 May 2006. There is no documentary evidence as to the reason RS was unable to attend on this date. As a result of the conversation with RS, PE stated that he would send a note to Councillors informing them of a request to change the AGM date.

Following further email exchanges with AS on 21 February 2006 PE sent a Memo on 23 February 2006 to all councillors noting that he had received a request to change the date of the AGM to 24 May 2006 and requesting confirmation of availability on the new date. At no stage up to this point had RS (or AS) raised any concerns that Council had not approved the date of the AGM.

RS first informed PE that he believed Council had not approved the date of the AGM in an email on 26 February 2006. It would appear that the point was made to strengthen RS's argument for changing the date of the meeting. PE responded by stating that he believed that he had acted in accordance with Council practice.

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<sup>151</sup> Part A, page 71

<sup>152</sup> Part A, page 77

<sup>153</sup> Part A, page 77

<sup>154</sup> Part A, page 77

<sup>155</sup> Part A, page 85

<sup>156</sup> Part B, tab 2, pages 21-22

<sup>157</sup> Part B, tab 2, page 22

In a further email from RS to PE on 27 February 2006 RS further asserted that the date of the AGM had not been set with Council approval or after consultation with Councillors. RS proposed that the matter be added to the Agenda for the LGCC meeting of 3 April 2006.

Following PE's resignation the date of the AGM was later changed by a majority decision at the LGCC meeting of 3 April 2006.

The evidence demonstrates a clear intent on RS's part to change the meeting to a date that he could attend. The underlying reason for the request to change the date was undoubtedly RS's inability to attend the meeting on 15 May 2006. In the interview for the investigation RS confirmed that he thought it was probably because his son was getting married that he could not attend<sup>158</sup>. However, the criticism levied at PE, namely that he had failed to obtain Council's approval of the date, was used by RS to support his contention that the date should be referred to Council for approval. The criticism highlighted a genuine error on PE's part in that he did not ensure the date of the AGM was formally approved either by the Chairman, or the Council.

### **7.3.3 Compliance with Code of Conduct**

It is the author's view that RS's behaviour in respect of his request to PE to change the date of the AGM and his assertion that the date had not been approved by Council does not demonstrate a failure to treat PE with respect. The communications of 2 - 27 February 2006 from RS (and AS) to PE were initially couched in the terms of an enquiry as to whether the date of the AGM could be changed, later highlighting a genuine error by PE, namely PE's failure to obtain Council's approval of the date, and finally suggesting the issue be resolved by placing an item on the next LGCC Meeting Agenda. Neither the contents, tone nor occurrence of RS's communications demonstrate a lack of respect towards PE or harassment of PE.

RS does appear to have dealt with the change of dates for the annual meeting in a rather assertive manner. However, there is no evidence to suggest that RS's behaviour compromised the impartiality of his fellow Councillors in the vote to change the date of the meeting. No breach of paragraph 2(c) of the Code of Conduct is found.

It follows accordingly that RS's behaviour in respect of the date of the AGM does not breach paragraph 2(c) of the Code of Conduct.

## **7.4 RS's General Behaviour towards PE**

### **7.4.1 Evidence**

This section of the report deals with general more minor episodes of RS's treatment of PE and focuses on the manner in which RS criticised PE's performance.

The first incident arose following a meeting of the General Purposes Committee (GPC) on 21 December 2005. At several points in the meeting the Chair, LM, invited a member of the public to address the Committee<sup>159</sup>. At the meeting PE did not advise LM that he was not permitted to allow members of the public to speak during discussion of agenda items without suspending the Standing Orders<sup>160</sup>, because he did not wish to embarrass LM<sup>161</sup>. PE spoke to LM privately immediately after the meeting to request that, in the future, he invite members of the public to speak in the Open Agenda section of the meeting, or alternatively, suspend

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<sup>158</sup> Part B, tab 9, page 14

<sup>159</sup> Part B, tab 8, page 11

<sup>160</sup> Part B, tab 5, page 11

<sup>161</sup> Part A, page 37

the Standing Orders if a contribution is invited during discussion of an agenda item. LM accepted PE's advice and apologised for his conduct in an email to all Councillors<sup>162</sup>.

RS was present at the meeting of 21 December 2005 and in a letter to PE dated 22 December 2005 RS stated that LM had breached the Council's Standing Orders by inviting a member of the public to address the GPC Committee<sup>163</sup>. RS notified PE that he felt PE should have instructed LM of the breach at the meeting but concluded,

*"I trust you will take this up with Councillor Maunders"*<sup>164</sup>.

In a letter of 29 December 2005 from PE to RS, PE confirmed that he had spoken to LM about inviting members of the public to speak at Committee meetings but stated that he would speak to LM on the matter again<sup>165</sup>.

PE received a similar complaint from RS following the meeting of the LGCC on 20 February 2006. RS recalls that during the course of the meeting a member of the public passed two written notes to LM and Councillor Williams passed a note to Councillor Kearns<sup>166</sup>. PE confirms that written notes were passed at the meeting. PE states that he did not address the matter during the meeting but raised the issue with the member of the public following the meeting.

In an email dated 21 February 2006 RS informed PE of his, and other councillors, concerns regarding the passing of notes at the LGCC meeting and whilst acknowledging that PE had spoken to the member of the public, he suggested that PE place on record his concerns regarding the passing of notes between LM and the member of the public<sup>167</sup>.

Another key area of criticism levied at PE by RS regarded PE's attendance at the LGCC office. RS first raised concerns relating to PE's office hours following sight of PE's Contract of Employment (see Section 7.1.1) and in a letter to JW, dated 22 December 2005, expressed concern that the PE's employment contract did not specify PE's working hours<sup>168</sup>. RS asserted in the letter that PE was only working in the LGCC office from 9.00 am to 11.00 am<sup>169</sup>.

PE acknowledges that because there was no phone or heating installed in the LGCC office he initially worked at the office for part of the day and at home for the remainder of the day. RS acknowledges that there was a problem with the heating in the Elim office when PE commenced his post at the LGCC<sup>170</sup>.

On 22 December 2006 RS amended PE's Contract by specifying office hours of 9.00 am to 5.00 pm. PE recalls that he felt that RS believed his part time position (20 hours a week) for Henlow Parish Council was impacting on the hours he was working for the LGCC<sup>171</sup>.

In an email from RS to PR and AW, RS again expressed his concern that PE was only attending the LGCC office between 9.00 am and 11.00 am and further stated that some Councillors had reported that PE had not been in the office during those hours on some

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<sup>162</sup> Part B, tab 5, page 2; Part A, page 99

<sup>163</sup> Part A, pages 33-34

<sup>164</sup> Part A, pages 33-34

<sup>165</sup> Part A, page 37

<sup>166</sup> Part B, tab 8, page 12

<sup>167</sup> Part A, page 67

<sup>168</sup> Part A, page 35

<sup>169</sup> Part A, page 35

<sup>170</sup> Part B, tab 9, page 3

<sup>171</sup> Part B, tab 3, page 13; Part B, tab 4, page 2

occasions<sup>172</sup>. In the email RS suggested that the matter be brought to the attention of the EC<sup>173</sup>.

The matter was accordingly passed to the EC and in the Monthly Progress Meeting with PE on 5 January 2006 KC and JW discussed the issue with PE<sup>174</sup>. The matter was resolved during discussion of PE's employment contract at the EC meeting of 9 January 2006 where it was agreed that PE would attend the LGCC office during the hours of 10.00 am to 2.00 pm on Mondays, Tuesdays, Thursdays and Fridays when it was open to the public<sup>175</sup>.

During the course of PE's employment with the LGCC RS raised several other small concerns in respect of PE's performance in the post. Firstly, RS recalls that early on in PE's employment he noticed spelling errors in several documents produced by PE. In response to this RS states that he asked PE to send him copies of all letters to outside parties for him to check<sup>176</sup>. PE asserts that RS did not at any time tell him why he had asked for the letters or that he had concerns over their quality. RS states that he brought the matter to the attention of the EC and they raised the issue with PE and the arrangement regarding the letters ceased<sup>177</sup>.

RS informed PE of an error he had made in calculating the notice period for the LGCC meeting of 15 March 2006. In a letter to PE (undated) RS stated that the notice for the March LGCC meeting was inadequate and breached the requirement to provide 3 clear days notice as stated in the Standing Orders<sup>178</sup>. The Notice for the meeting is dated 8 March 2006, however, RS asserts that the notice was sent to Councillors on 10 March 2006. Subsequently, PE accepted this and sent a Memo, dated 14 March 2006, to all Councillors to inform them that the LGCC meeting had been cancelled.

#### **7.4.2 Finding of Facts**

In dealing with the matter arising from the GPC meeting of 21 December 2006 RS notified PE of his disapproval of LM's invitation to allow a member of the public to speak and PE's failure to instruct LM of the breach of Standing Orders during the meeting. On receipt of RS's letter PE had already sanctioned LM for his conduct and informed him of the requirements of the Council's Standing Orders. No further action was taken by PE following RS's letter.

On 21 February 2006 RS sent PE an email in respect of a further complaint relating to the passing of notes between LM and a member of the public during the LGCC meeting of 20 February 2006. As with the December complaint PE had addressed the matter at the end of the meeting and no further steps were taken on receipt of RS's email.

Shortly after PE's commencement at the LGCC, RS expressed concern regarding PE's office hours in communications with JW, PR and TW. The emails alleged that PE was attending the LGCC office on a daily basis for just 2 hours, carrying an implication that PE was not working the hours required by his 37 hour contract. In response to his concerns, RS independently altered PE's Contract of Employment to include a clause specifying office hours of 9.00 am to 5.00 pm. PE's working hours were subsequently raised with PE by the EC at PE's Monthly Progress Meeting on 5 January 2006 and agreed by the EC on 9 January 2006.

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<sup>172</sup> Part A, page 39. NB: the email is undated but was sent at some stage in December 2006

<sup>173</sup> Part A, page 39

<sup>174</sup> Part A, page 42

<sup>175</sup> Part A, page 44

<sup>176</sup> Part B, Tab 8, page 14

<sup>177</sup> Part B, Tab 8, page 14

<sup>178</sup> Part A, page 101

RS raised the issue of PE's spelling directly with PE and requested that he send letters addressed to outside bodies for him to check. The matter was subsequently passed to the EC.

With regards to the notice period of the LGCC meeting RS alerted PE to an error and it appears that on checking the Standing Orders PE agreed he had provided inadequate notice and notified Councillors that the meeting was cancelled on 14 March 2006.

### **7.4.3 Compliance with the Code of Conduct**

RS's two complaints to PE regarding the conduct of LM and a member of the public in the GPC and LGCC meetings illustrate an attempt by RS to ensure that PE had informed the parties concerned that their behaviour amounted to a breach of the Council's Standing Orders. Given that PE did not address either issue during the meetings it is understandable for RS to query that the matters had been actioned. It is not considered that RS's approach to these issues demonstrates a controlling attitude or actions that were intended, or likely, to compromise PE's impartiality in dealing with the matters. In any case, PE took no further action in either case other than to confirm to RS that he had dealt with the issues. In short no breach of paragraph 2(c) of the Code of Conduct is found. In relation to paragraph 2(b) it is held that during his communications with PE, RS treated PE with respect and consequently no breach of the Code of Conduct arose.

With reference to the manner in which RS dealt with PE regarding his attendance at the LGCC office, it is considered that RS failed to treat PE with respect. In the first instance RS should not have included accusatory statements regarding PE's office attendance in emails to other Councillors. Secondly, RS should have raised the matter directly with PE. Thirdly, on informing PE of his concerns, RS should have then referred the matter to the Chairman of the EC to determine the appropriate course of action. No question of impartiality arises on this issue.

The author's view is that RS's criticism of PE's spelling and the way in which he dealt with it amount to a breach of the duty to treat others with respect. Whilst it is felt that it was correct for RS as the Chairman of the LGCC to discuss the issue with PE, the request by RS that PE send any letter to external organisations to him to check is potentially insulting and an inappropriate course of action. Again, as with the matter of the office hours, the issue should have been referred to the Chair of the EC, or alternatively, MB or KC, who had been appointed to undertake monthly progress reviews with PE. No issues of impartiality arise.

No issues of disrepute arise as a result of the evidence presented.

## **8. Conclusions – The Breaches of the Code of Conduct**

### **8.1. Paragraph 2(b) – Respect**

RS's behaviour towards PE in relation to his contract of employment, specifically RS's alteration of the NALC Model Contract and his later refusal to sign the contract approved by the EC and LGCC amounts to a failure to treat PE with respect and a breach of paragraph 2(b) of the Code of Conduct.

The behaviour demonstrated by RS in relation to The Comet advert amounts to a serious breach of the obligation to treat others with respect. RS was responsible for the failure to ensure the Council's protocols were followed in dealing with an external contractor, the contentious wording of the advert, the misunderstanding on the part of RW regarding the instructions for preparation of the final copy of the advert and the subsequent failure to obtain Council approval. Rather than accept the basic failings which PE's report broadly identified, RS engaged in various exchanges with PE in which he criticised PE's investigation and report, demanded an apology from PE and accused PE of failing to prevent the publication of

the advert. In addition, RS sought to relay his criticisms and accusations to other Councillors via email. RS's behaviour amounted to nothing less than the bullying of PE.

RS's behaviour in relation to his request to change the date of the AGM demonstrates RS's ability to use a situation to support his arguments but does not amount to a failure to treat PE with respect. The contents, tone or frequency of RS's communications with PE on this subject did not demonstrate a lack of respect towards PE or harassment of PE.

With regards to the general treatment of PE by RS it is considered that the manner in which RS dealt with PE regarding his attendance at the LGCC office and RS's approach to the criticism of PE's spelling did amount to a failure to treat PE with respect. RS's accusatory statements to other councillors regarding PE's attendance at the LGCC and request that PE send letters to external organisations to RS to check the spelling were both disrespectful and inappropriate behaviour for a Chairman.

### **8.2 Paragraph 2(c) – Impartiality**

No issues of impartiality arose in relation to PE's contract of employment, The Comet advert, the request to change the date of the annual meeting or RS's general behaviour towards PE.

### **8.3 Paragraph 4 – Disrepute**

RS's treatment of PE regarding his contract, whilst breaching paragraph 2(b) of the Code of Conduct, was not conducted in the public arena and therefore it is concluded that RS's behaviour in this respect did not bring the LGCC into disrepute. However, in relation to the advert in The Comet, RS's role in the publication of the advert did bring the LGCC into disrepute. Further RS's bullying behaviour towards PE is clearly also capable of bringing the LGCC into disrepute. No further issues of disrepute arose in respect of RS's general treatment of PE.

## **9. Report Recommendations**

The conclusions of this report highlight a number of key issues affecting the LGCC including:

- The dominant and potential misuse of the role of the Chairman.
- A lack of understanding of parish council Standing Orders and protocols amongst the Chairman and Councillors.
- A failure by the Chairman and Councillors to understand their own roles within the Council.
- The Council's approach to confidential staff issues.

In order to address these issues the author recommends that the roles of the Chairman and the Town Clerk be formally redefined by the LGCC.

Further training should be provided to Councillors to ensure they are familiar with Council protocols, such as contracting with outside bodies, their own Code of Conduct and the ethics and functions of local government.

Additional training might also be usefully given over the correct use and purpose of complaints to the Standards Board and the introduction of effective methods of resolving difficulties and arguments between individual Councillors.

A Committee within the LGCC should be created to deal with staffing issues of a confidential nature to avoid problems escalating.

An induction process should be introduced for any new employees/officers of the Council with a clear chain of command for their employment as well as the introduction of policies for dealing with monitoring, appraisal, review, disciplinary and grievance issues.

**10. Limitations of Report**

The reader should note that the content of this report is based on the evidence available at the time of the investigation. Some relevant documentary evidence, including Minutes of meetings between September 2005 and December 2005 has been lost and email correspondence between PE and Councillors following PE’s resignation has been deleted. As a result, it was impossible to rely on references made to such evidence and determinations were made in some instances on a balance of probabilities from the evidence available.

Furthermore, the complaint related to incidents which occurred during the period between the 7 November 2005 and 28 March 2006 and interviews with witnesses were conducted initially in June – August 2006 and with two witnesses in May 2007. This undoubtedly influenced the detail and accuracy with which those interviewed recalled the episodes and events subject to investigation.

**11. Note on Draft Report**

This report takes into account brief comments made by PE and JW in response to a draft thereof (issued in July 2007). Following receipt of the draft report, RS has indicated that he wishes to play no further part in this investigation due to what he considers is the improper way in which it has been undertaken and the lack of attention to what he describes as basic legal principles and his rights to have them applied. A copy of his email of 2 August 2007 will be made available to members of the Standards Committee at the relevant time, should they wish to see it.

.....

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7 August 2007

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