



Seaford Town Council

Minutes of the **Special Meeting** of the **Seaford Town Council** held at the **Council Chamber, 37 Church Street, Seaford** on **Tuesday 11 February 2014** at **7.00pm**.

Present:

Councillor M Brown (Mayor)

Councillors S Adeniji, R E Allen, B Burfield, S Dunn, P Franklin, S Gauntlett, T Goodman, B Groves, A Hayder, P Heseltine, A Latham, S McStravick, R Needham, B Warren & I White.
Young Mayor

Deputy Young Mayor

Mr Steve Brigden, Locum Town Clerk (Town Clerk of Lewes),

Mrs Lucy Clark, Support Services Manager – Seaford Town Council.

14 Members of the public

Councillor Sam Adeniji requested a motion that the order of business be altered and that Agenda Item 4 being moved to item 3 and that Agenda Item 3 be moved to Item 4. This would enable to the public to ask any questions arising from the Review Committee verbal update. Councillor Sarah McStravick and Councillor Stephen Gauntlett seconded this request.

The Mayor responded that he did not wish to change the order of the Agenda and the meeting continued.

The Mayor points out pointed out the wording for Agenda Item 4 should read Review instead of Investigation.

The Mayor also pointed out the item number mentioned in Agenda Item 5 should read 6 and not 5.

C69 Apologies for Absence

Apologies were received from Councillor Linda Wallraven

C70 Public Participation

Mr Brian Reed

a question regarding a recent notice served upon the publisher of the Haven News internet forum regarding alleged defamation. Mr Reed asked if public funds would be used to fund any legal action.

Locum Town Clerk

explained the action of the Council in sending the notice; arising from a formal complaint. It was explained that the Council itself could not be defamed, but that individuals could be and the Council had a duty to protect the interests of its employees in such circumstances, using public funds if need be.

Mr Simon Boots asked how the Council would ensure openness and transparency in the proposed Review and what provision there would be for public participation.

Locum Town Clerk noted that a report from the Review Committee was to be heard imminently.

Ms Karen Hardy reminded that she had approached Councillors during a recent public meeting and enquired as to the practicality of posting draft minutes on the Council website within a few days of meetings. She referred to other Sussex parishes which, she said, adopted this practice.

Cllr P Franklin The suggestion had been raised with staff and was being considered. Cllr Franklin asked for an email address to which he might send a personal update in due course.

Ms Vanessa Lawrence questioned the Mayor as to the reason that charities adopted by the previous Mayor had not continued to enjoy that support following his accession to the chairmanship.

Mayor this was a serving Mayor's prerogative, and it was his wish to benefit different charities. Funds raised up to the change of Mayor would be accounted-for and passed-on in the normal way.

C71 Review Committee

Members received an oral report on the proceedings of the Review Committee established to appoint an independent consultant to review issues and criticisms of the Council raised by Norman Baker MP in recent press reports and on his website.

The Committee had received a question from Councillor Latham and written questions from two members of the public concerning the process of review.

The Committee had met Ms Sheelagh Douglas of B3sixty Ltd, a company with considerable experience offering investigations into employment issues and working with councils to effect change. It was reported that Ms Douglas was a qualified accountant with audit experience and many years' service in local government, including past roles as Chief Executive of Taunton Deane Borough Council and of Wealden District Council.

It had been agreed that the basis of the consultant's Terms of Reference would be to examine the ten points raised by Norman Baker MP in a prioritised manner and prepare a report for the Council.

Essential to establishing the scope of the task would be for Ms Douglas to meet with Norman Baker and receive the evidence he held on file in support of various complaints from residents and former employees. This has been arranged for the afternoon of Friday 14th February. Until this has been done it would not be possible to accurately estimate the duration and cost of the task.

The Review Committee would be kept informed of progress but the consultant would act independently, as requested, and her findings would be brought before Council.

It had been agreed that no individual or group meetings would be set up for Ms Douglas to meet residents as; in the interests of consistency, it had been considered most appropriate that any resident with concerns relevant to the Review should channel their evidence through the MP.

Members raised several questions, such as access to the consultant for Councillors and staff inclusion; and sought assurances that recommendations would be brought to Council for decision. It was reiterated that this was to be an independent review, and its handling was appropriately to be left to the highly-experienced professional consultant. She was commissioned by the Council as the employing body, and it would be for the Council to decide upon the results.

One Member suggested that the Review Committee should be increased in size and re-structured to recognize political proportionality. It was noted that the committee was tasked solely with the arrangement of an independent review, and that it had been formally constituted only one week earlier by a resolution of Council. It had no continuing role except perhaps as point-of-contact.

A question arose as to the cost of the Review, and it was noted that the total, and the timescale, would be accurately estimated once the consultant had opportunity to assess the amount of material being held by Norman Baker MP.

There followed further general questions.

It was **RESOLVED** that the oral report on proceedings of the Review Committee on 10th February 2014, presented by Cllr P Franklin to Seaford Town Council on 11th February 2014, be **NOTED**.

C72 Exclusion of the press and public

It was **RESOLVED** that the press and public be **EXCLUDED** from the meeting during discussion of the following item on the agenda, in accordance with provisions of the Public Bodies (Admission to Meetings) Act 1960, as the matters concerned personal information regarding a member of staff.

A short recess was called to allow the room to be cleared; during which a note was distributed to all Councillors showing legal advice on the forthcoming issue, obtained from Hedleys Solicitors – retained by the Sussex & Surrey Associations of Local Councils (SSALC).

C73 Request for Suspension of Town Clerk

The agenda carried a proposal: “With immediate effect to suspend the Town Clerk whilst an independent investigation is undertaken and concluded, within due process and without prejudice subject to employment law.”

The Mayor read a statement that he had prepared on the basis of advice and research into the technical position in law of the respective parties. He stated that there was a high risk of possible high cost and vulnerability to the council. Employers should consider suspending an employee *only* when there was a potential threat to the business or other employees; it was

impossible to properly investigate the allegation if the employee remained at work (for example because they may destroy evidence or attempt to influence witnesses) or; relationships at work had broken down to such an extent that suspension was required. The employee's rights must be borne in mind when considering suspension.

Press coverage of organisational scandals may lead to calls for suspension of those implicated in the events; but once an employee was suspended the risk of highly damaging rumour, speculation and external publicity was often increased, especially where a lengthy investigation was necessary.

There were clear legal issues that employers needed to consider; to ensure that they acted within the boundaries of employment law.

Another "side effect" of suspending an employee was that it may suggest to the employee that the employer already considered them to be guilty of any allegations made and irreparable damage may therefore be sustained to the ongoing relationship.

Cllr Brown drew Members' attention to the recent case of *Sharon Shoemith vs OFSTED & Others [EWCA Civ 642 (27 May 2011)]* – known more commonly as the Haringey Council case. That Council had, effectively, been ordered by a Minister of State to sack Ms Shoemith without going through their proper procedure. Ms Shoemith sued for unfair dismissal, won her case and received a total pay-out of 7 figures.

A member proposed the addition of words to the motion, to state that it was a *neutral act* and that suspension would be *on full pay and conditions*. Recent weeks, it was said, had been very difficult for all; but extreme circumstances prevailed and were sufficiently grave to warrant suspension. A counter view was expressed: that to protect the public interest the review should take its natural course and subsequent decisions should rely upon facts and legal advice.

An email sent recently on behalf of three Councillors to the Mayor was read to the assembly. It called for suspension, citing Standing Orders, and stating that this was "necessary" and referring to "substantiated allegations" among other issues of alleged "incompetence". It was claimed that the position expressed was backed by the credibility of a personnel industry professional institute, and it was submitted that it would "signal to complainants that their concerns were taken seriously". Action to suspend, it was said, would be "on reasonable grounds" and the reputation of the Council was at stake.

A number of contrary views were expressed at this; mainly with reference to the present lack of actual evidence in support of the claims and the need for the independent review to be concluded before any decisions were considered. The legal advice from Hedleys Solicitors pointed-out (among other things) that the matter was one of the employer-employee contractual relationship and it was not possible for third-parties such as Mr Baker to insist upon any action. It noted the public furore; the lapse of several years before any allegations had been brought forward; and that the current absence of any proper grounds for considering suspension would render the Council vulnerable to legal action should it take that course. Several Members noted the absence of any proper evidence, and it was stated that Norman Baker had not provided to the Council whatever information he held, despite requests to do so.

The locum Clerk was asked for advice on the issue, and whether Councillors might be held individually liable should there be legal action following a suspension. He advised that any action would be against the corporate entity of the Council, but that individual members should be extremely circumspect in their engagement with the current media coverage, or they could be vulnerable. On that point, it was noted that individual Members had already expressed views and made allegations in the media which would be extremely difficult to

justify. On the general issue, Councillors were advised, it should be recognized that the Council had already left itself vulnerable by putting into the public domain an agenda that carried a clearly-worded request for suspension of the Town Clerk with no clarification or supporting evidence to justify the proposal, and thereby implying some serious, yet unidentified, cause. This alone could be cause for action should the Town Clerk pursue a grievance. That suspension could be argued as a “neutral act” given the background of publicity and the demand for suspension by Norman Baker MP in the media, was seriously questionable and any Employment Judge would be likely to infer that the Council had acquiesced to public pressure. Mr Brigden also took issue with the justification offered in the quoted email to the Mayor. This had not been distributed to all Members to enable them to inform themselves in time for the debate. To claim that suspension was “necessary” was unsupportable in employment law terms. That allegations were “substantiated” was a false claim as they had yet to be seen by the Council; being withheld by the MP. That there were issues of sustained “incompetence” would be contested by the Town Clerk’s previous exemplary appraisals since her employment began, and contrasted with her position as the national External Affairs Officer for the professional institute; The Society of Local Council Clerks. He cited a case: *Clark v Nomura International Plc* [2000 IRLB 651], in which the High Court had established that it was “perverse” to take action when any allegations that were made had not been treated previously as sufficient to require even advice or warning, and did not comply with terms of employers’ discretion. There were clear reports from all auditors each year since the Council’s inception in 1999, and the audit regime tested matters of governance as well as simple financial accounting.

Calling for a recorded vote, one Councillor exhorted colleagues to think carefully before acting against the legal and professional advice they had received. Another stated that he had reversed his opinion having heard and read all the advice and comments offered; whilst another recounted a cautionary tale from his experience in similar circumstances earlier in his career.

A recorded vote was duly taken on the amended proposal,

Councillor S Adeniji	-	Against
Councillor B Allen	-	Against
Councillor M Brown	-	Against
Councillor B Burfield	-	Against
Councillor S Dunn	-	Against
Councillor P Franklin	-	Against
Councillor S Gauntlett	-	For
Councillor B Groves	-	Against
Councillor A Hayder	-	For
Councillor P Heseltine	-	Against
Councillor A Latham	-	Against
Councillor S McStravick	-	For
Councillor R Needham	-	Against
Councillor B Warren	-	Against
Councillor I White	-	Against

It was RESOLVED that: the motion “With immediate effect to suspend the Town Clerk whilst an independent investigation is undertaken and concluded as a neutral act, within due process and without prejudice subject to employment law and on full pay and conditions.” **Be NOT supported**

The motion was **DEFEATED** (3 votes in favour: 13 against).

The meeting finished at 8.15pm

Councillor M Brown

Mayor

DRAFT