

Congleton Town Council

Minutes of the Meeting of the Council held on Thursday,
29th October 2015 in the Town Hall, Congleton.

PRESENT: Councillors

N Adams
Mrs S Akers Smith
Mrs D Allen
Mrs A L Armitt
J G Baggott
L D Barker
P Bates
R Boston
P Broom
D T Brown
G R Edwards
G P Hayes
Mrs S A Holland
Mrs A M Martin
Mrs A E Morrison
Mrs J D Parry
Mrs E Wardlaw (Town Mayor)
G S Williams

1. **APOLOGIES**

Apologies for absence. (Members are respectfully reminded of the necessity to submit any apology for absence in advance and to give a reason for non-attendance).

Apologies for absence were received from Councillor H Richards.

2. **MINUTES**

CTC/33/1516 RESOLVED- That the Minutes of the meeting held on the 17th September 2015 be approved and signed by the Mayor.

3. **DECLARATIONS OF DISCLOSABLE PECUNIARY INTEREST**

Members are requested to declare both “non pecuniary” and “pecuniary” interests as early in the meeting as they become aware of it.

Cllrs P Bates, D T Brown, Mrs E Wardlaw and G S Williams declared a non-pecuniary interest in any matters related to Cheshire East Council.

4. **OUTSTANDING ACTIONS**

None.

5. **PRESENTATION OF PENNANT**

The Town Mayor presented a pennant to John Gibb for St Peter's Church who thanked the Town Council for providing the pennant.

6. **QUESTIONS FROM MEMBERS OF THE PUBLIC**

Question from Mr G Goodwin

Dear Sirs

On 5th March 2015, the council accepted changes to the Complaints Policy. When the reasons for the changes were outlined to the F and P Committee by the Town Clerk at the F and P Meeting On 19th February 2015 it was stated that the proposed changes to the Policy would enhance and streamline the system and, whilst the basic changes to the policy as explained at the meeting are relatively non-contentious, at the same time, the procedure for hearing a complaint against the Mayor or the Town Clerk was also changed although this was not mentioned at all in the Town Clerk's presentation Prior to March 2015 a complaint against the Mayor or Town Clerk, together with the defence to that complaint, was heard at a full council meeting with all councillors, public and press present. At that time the pertinent paragraph of the Procedure stated:-

“Where the Clerk or Mayor receives written complaint about his/her own actions, he/she will forthwith refer the complaint to the Council.”

This paragraph was removed completely when the amended Code was adopted in March but no reason was given for its removal and its removal was certainly not mentioned when the Clerk presented the proposal for change to the F and P committee. As a result of the change, a complaint against the Mayor or the Clerk now follows the 3 stage procedure in the Code intended for general complaints but democracy demands that such complaints against senior members of the council are considered in an open and transparent manner

As the Code now stands, a complaint against the Clerk is first heard by a senior member of the council staff whose immediate superior is the Clerk, the second stage is a review by the Clerk himself and the final stage is consideration, in private, by a committee comprising the Mayor, The Deputy Mayor and the “Leader”

This procedure, when used for a complaint against the Mayor or the Clerk, cannot reasonably be regarded as unbiased, democratic and transparent

My question for the council is –

What precisely was the reason for the removal of the requirement for a complaint against the Mayor or Town Clerk to be referred forthwith to the council and, since it is now more than 6 months since the Code was amended, why can't the same paragraph not be reinserted into the current Code?

Response by the Town Mayor

The reason the Town Council sought to examine its complaints policy earlier this year was because there was a view that the process was being abused by certain individuals. A complaints procedure needs to be fair and objective and it became apparent in respect of the Town Clerk and the Town Mayor, that being singled out differently to every other Councillor and employee in this manner, was fundamentally wrong and manifestly unfair.

Indeed advice from our HR advisers clearly stated that to continue with the existing unfair system singling out one employee to be subjected to public scrutiny could lead to a successful claim of constructive dismissal because it would be a clear breach of contract in that the normal employee procedures for governing performance management for discipline, grievances/complaints had not been followed.

Secondly, to continue with the previous procedure would be contrary to the Data Protection Act which states:-

Data protection and Confidentiality

To ensure compliance with its obligations in the Data Protection Act 1998 ('the 1998 Act'), a council cannot disclose the identity, contact details or other Personal data about an individual complainant/complained or any other party involved in the process, unless he/she consents or disclosure is otherwise fair and lawful under the 1998 Act; e.g. for the purpose of discharging the council's functions, or for the performance of contractual Obligations. Councils should ensure that agendas and minutes do not disclose personal data or financial, sensitive or confidential information that relates to an individual complainant/complained or any other third party in the agendas or minutes of its meeting.

In this instance Congleton Town Council would be acting contrary to the DPA if it continued with the previous Complaints Procedure as undertaking a complaint against the Town Clerk in a Town Council meeting would be a clear breach of the DPA as it states that such personal data cannot be provided as such information we are advised is subject to the exemption contained at FOIA Section 40 (2).

Part II of the FOIA contains the types of information exempt from the general right of access contained in S.1 of the Act. The S.40 (2) exemption covers the personal data of third parties where complying with the request would breach any of the principles in the Data Protection Act 1998 ("DPA"). The first principle of the DPA states that "*personal data shall be processed fairly and lawfully*"

Thus the revised Complaints Policy is now fair to all parties concerned including the Town Mayor and our employees, it is robust, much clearer and easier to understand and meets the legal requirements under the Data Protection Act and complies with good practice as set out under Employment Law.

Mr G Goodwin raised a supplementary question concerning the three stage process of the Complaints Policy and asked how the Town Clerk could be involved in stages 1 and 2 if the complaint was against him or the Town Mayor. The Town Clerk responded by stating that the Council was capable of taking a common sense view of the Complaints Policy and would use the most appropriate stage of the procedure depending upon the circumstances.

7. **MAYOR'S ANNOUNCEMENTS**

The Town Mayor drew attention to the various engagements that she and the Deputy Town Mayor had fulfilled since the last Council meeting.

8. **PLANNING COMMITTEE**

CTC/34/1516 RESOLVED that the minutes of the meetings held on 20th August 2015 and 24th September 2015 be received and the recommendations therein be adopted.

9. **COMMUNITY, ENVIRONMENT & SERVICES COMMITTEE**

CTC/35/1516 RESOLVED that the minutes of the meeting held on 27th August 2015 be received and the recommendations therein be adopted.

10. **FINANCE & POLICY COMMITTEE**

CTC/36/1516 RESOLVED that the minutes of the meeting held on 10th September 2015 be received and the recommendations therein be adopted.

11. **URGENT ITEMS**

There were no urgent matters raised.

12. **CHESHIRE EAST COUNCILLORS' REPORT**

Cllr G S Williams reported that he had attended the North West in Bloom Awards for Neighbourhood and Community Groups and wanted to congratulate Buglawton who were awarded level 3, Bromley Farm level 4, The Jubilee Club, Hilary Avenue Allotments and Heath View Nursing Home awarded level 5.

Cllr D T Brown mentioned that the Local Plan is being reviewed by the Planning Inspector at Macclesfield, but expressed extreme concern because one of our local developers has put forward a report claiming there is no need for the Link Road. He suggested as a matter of urgency that the Council should send a letter to the Planning Inspector refuting such a claim and stressing the importance of providing the Link Road.

CTC/37/1516 RECOMMENDED that:-

1. The Town Council send a letter to the Planning Inspector reaffirming our strong commitment to the Link Road.
2. The proposal to send such a letter will be formally resolved and approved at the Planning Committee meeting scheduled for 5th November 2015.

13. **YOUTH COMMITTEE**

CTC/38/1516 RESOLVED that the minutes of the Youth Committee meeting held on 19th October 2015 be received.

Matthew Jones, the new Chairman of the Youth Committee read out a letter from Joseph Hearson, the former Youth Committee Chairman.

14. **LOCAL COUNCIL AWARD SCHEME**

The Council considered the various options related to the Local Council Award Scheme.

CTC/39/1516 RESOLVED that the Town Council seek accreditation at the Gold level of the Local Council Award Scheme.

15. **RECRUITMENT OF CHIEF OFFICER**

A report on the recruitment process for the position of Chief Officer was considered including a recommendation from the Personnel Committee to appoint Mr David McGifford to the post. .

CTC/40/1516 RESOLVED that the recommendation of the Personnel Committee be approved and that Mr McGifford be appointed to the role of Chief Officer.

Mrs E Wardlaw
TOWN MAYOR