

Newby and Scalby Town Council and the “sham redundancy.”

What went wrong and who is responsible?

In September 2023, our friend, Helen King made a formal Grievance complaint against the Town Clerk, Mrs Jools Marley. Less than six months later, Helen was made redundant. We now have the Employment Tribunal Judge's Reasons for finding in Helen's favour and can piece together the multiple abuses at the heart of our local council.

What happened on 29th November 2023?

This is a key date and there were actually two meetings of the council on 29 November. The first was a meeting of the Review and Staffing Committee which was called to confirm the arrangements for the 12 December disciplinary hearing into Mrs Marley's alleged bullying behaviour. The second was an Extraordinary Meeting called to hear the findings of the Review and Staffing Committee.

Who attended the Review and Staffing committee meeting and what was decided?

Committee members were **Reg Towse (Chairman), Cllrs Bastiman Holliday, Smith and Thompson**. Having been suspended, Mrs Marley had handed in her resignation with 12 weeks notice before the meeting and the main issue was whether to continue with the disciplinary hearing on 12 December or to end the whole process. ACAS (the Advisory, Conciliation and Arbitration Service) who, is the recognised authority in employment matters, advised continuing with the disciplinary hearing but the R&SC decided otherwise by a majority of four to one (our friend Reg Towse was outvoted.)

The official minutes of this meeting were mysteriously signed by Cllr Thompson (who became the Chairman after Cllr Towse resigned on principle after this debacle) some four months later so we now need to delve into the draft minutes produced contemporaneously by Cllr Smith:

*“Cllr R Thompson proposed this be brought to a conclusion and it was **Agreed** by Cllr Halliday, Cllr Bastiman and Cllr Smith. that a Settlement Agreement be drafted for consideration. **Objection to be noted** by Cllr Towse who believed that the Disciplinary process should continue. Cllrs Thompson, Smith and Halliday agreed to meet on 4th December for the purposes of drafting the agreement, which would need to be approved at the next R&S meeting before it can be offered.*

This is what Judge Flanagan had to say about this in his findings at the Employment Tribunal:

23. Rather than await the outcome of the disciplinary process, following a further council meeting that took place on the 29th November 2023, the decision was made to bring the disciplinary meeting to an immediate conclusion. It is notable that this occurred without any hearing taking place or any further enquiry. The Clerk to Council, Ms Marley was then informed that the suspension was lifted and she was directed to return to work. In the course of this meeting, Counsellor Towse, who had been chair of the council, objected. However, the motion to cease the disciplinary process nevertheless carried. **It has not been possible to make any specific findings regarding how these events transpired, save to observe that not all documentation and communications regarding the events appear to have been disclosed by the Respondent.**

So, on 29th November 2023, **Cllrs Bastiman, Holliday, Smith and Thompson** decided to bring the disciplinary meeting to an immediate conclusion with no reasons given. Why? - for that we

What went wrong and who is responsible? Episode 2.

In the first episode of this series we looked at what happened on 29th November 2023 when the Review and Staffing Committee voted by four votes to one to, in Judge Flanagan’s words “*bring the disciplinary meeting to an immediate conclusion.*” Judge Flanagan goes on to say “*It is notable that this occurred without any hearing taking place or any further enquiry.*” The subtext here is that the Judge believes this was a serious mistake that influenced his final judgment.

Councillors Bastiman, Holliday, Smith and Thompson voted for this “*notable decision*” with Reg Towse voting against. Many people ask the reasonable questions: “Why did the four councillors vote to retain the Town Clerk even though they knew that she had been accused of being a bully and harassing a member of staff?” “Wasn’t it their job to find out the facts and make a decision?” “Where would this leave Helen King and her Grievance Procedure complaint?”

These are questions that should be answered by **Councillors Bastiman, Holliday, Smith and Thompson** but neither has responded when asked. A witness reports that at the 29 November meeting and after some discussion, **Councillor Bastiman** “nodded his head” and, according to Cllr Smith’s Draft Minutes “**Cllr R Thompson** proposed this be brought to a conclusion and it was **Agreed** by **Cllr Halliday, Cllr Bastiman and Cllr Smith** that a Settlement Agreement be drafted for consideration.” Some might argue that the “nodding” is evidence of a prior agreement amongst the Gang of Four being reached but we couldn’t possibly comment on that.

What happened on 4th December 2023?

We know that a meeting of a Sub Committee of the Review and Staffing Committee consisting of **Cllrs Halliday, Smith and Thompson** met on 4th December to consider a “Settlement Agreement” but the minutes of this meeting have yet to surface. As Judge Flanagan observed: **70.** “*The Tribunal noted the absence of various significant documents, in particular Council Meeting Minutes, but no specific factual findings or adverse inferences were made regarding the impact of their absence.*” Employment Tribunal Judges are notable for their discretion and their ability to avoid giving the opportunity for their decisions being challenged in law so it is reasonable to assume that there is some significance in this statement. We can return to the Settlement Agreement at another time after we look at what happened on 7th December 2023.

What happened on 7th December 2023?

Reg Towse resigned “on principle” because of the “foolish” Review and Staffing Committee decision to reinstate Mrs Marley without, in Judge Flanagan’s words “*any hearing taking place or any further enquiry.*” Like many others, the minutes of the meeting were signed by Chairman Thompson over four months later but include:

RS29/23.1 That previous resolutions regarding the disciplinary of a member of staff be disregarded **due to new evidence and information being received to justify that action.**

RS29/23.2 [Minute RS20/23.6 refers] That the locum engaged by ex-Cllr. Towse be paid for the hours worked to date but her services were no longer required.

RS29/23.3 [Minute RS9/23.1 refers] That a member of staff who raised a grievance be informed of the outcome and notified of the Council’s appeals procedure.

So, in quick succession, **Cllrs Bastiman, Holliday, Smith and Thompson** decided to reinstate a Clerk who had been accused of being a bully without undertaking any further enquiries and also abandoned Helen King. They also, very rudely, dispensed with the services of a locum Town Clerk who had been brought in to help. For what happened next - see Episode 3 of this series that examines the inner workings of our local council together with the “new evidence received.”

What went wrong and who is responsible? Episode 3.

So far in this series we have examined what happened within the Review and Staffing Committee on 29th November 2023 and 7th December 2023 which resulted in a decision to reinstate a Clerk who had been accused of being a bully without undertaking any further enquiries and in doing so, abandoned Helen King. We learned in particular that the Review and Staffing Committee decided (minute RS29/23.1) “*previous resolutions regarding the disciplinary of a member of staff be disregarded due to new evidence and information being received to justify that action.*”

It's important that we don't forget that the minutes for most of the meetings of Newby and Scalby Town Council at that time, including the Review and Staffing Committee, were written some four months after the events and signed by Chairman Thompson. We will leave our readers to decide for themselves why that happened.

So, what was that “new evidence and information” that the Review and Staffing Committee placed so much emphasis on in deciding to disregard previous resolutions? How strong was that evidence and why did the committee decide that it should reinstate Mrs Marley and deny the natural justice due to Helen King? This is what Employment Judge Flanagan had to say:

26. In a council meeting on the 7th December 2023, a decision was made to ‘disregard’ the disciplinary matter against Ms Marley, with the available notes stating that this was due to ‘new evidence and information being received’. It has never been explained what this new evidence was; the only development that is evidenced in the short intervening period was Ms Marley’s resignation and retraction of that resignation.

So Judge Flanagan found that this crucial “new evidence has never been explained.” Recall the Judges observation - **70**. “*The Tribunal noted the absence of various significant documents ...*” Helen’s legal team requested this “new evidence and information” from the council but it was never made available, if it ever existed, to the Tribunal. It is reasonable for us to expect the council to retain such crucial information in a secure place knowing that it would need to be disclosed as part of legal proceedings. Before we delve any further into the “new evidence and information” it is important that we remind ourselves about what, exactly, Mrs Marley was accused:

18. A report was then prepared by the independent investigator, Ms Nicky Shelton, dated 8th November 2023. It found that there were substantiated findings of bullying, harassment and/or intimidation, as well as evidence of aggressive behaviour, which had resulted in intimidation. The report concluded that the conduct breached the principles of dignity at work, civility and respect. There were also specific findings in relation to ‘chuntering and snarling’, occurring between the parties, with all the findings made on the balance of probabilities. The Council was provided with a detailed written report, as well as several annexes which included notes of the interviews and other documentary material.

19. The report concluded with a recommendation for disciplinary action to be taken against Ms Marley.

It is an inescapable fact that these are very serious accusations that the Council had a duty to investigate. Judge Flanagan notes that the findings were “on the balance of probabilities” but it was the Council’s duty to fairly apply their adopted Disciplinary Procedure and determine where that balance lay. The Council failed in that duty and in doing so failed Helen King in particular but also the people of Newby and Scalby. Since then we have had the systematic cover-up of their failures. We will examine further in Episode 4 what this “new evidence and information” is.

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What went wrong and who is responsible? Episode 4.

At the end of Episode 3 we reminded ourselves of the serious accusations that had been made against the Clerk, Mrs Marley, and the substantiated findings of the independent investigator, Nicky Shelton. In this episode, we will examine in some detail the “new evidence and Information” that was used to justify the reinstatement of Mrs Marley with the inevitable consequence that Helen King would be made the victim of a “sham redundancy.”

27. In evidence before the Tribunal, Ms Smith – who was a member of the council who made the decision to stop the proceedings – stated that the Council was unimpressed with the ‘structure’ of the independent report. In answering questions to the Tribunal, she also stated that the conclusions were reached on the balance of probabilities, not so that the investigator was ‘sure’.

30. Ms Smith gave evidence to the Council would be ‘left in lurch’ without Ms Marley and ‘in disarray’.

It’s time to unpick these two findings of Judge Flanagan - beginning with the claim (27) that “Council were unimpressed with the structure of the report.” Did they ask any questions of Nicky Shelton or ask for further investigations to be carried out? Evidently not because, as Judge Flanagan finds (23) this crucial decision was taken “without any hearing taking place or any further enquiry.” Why did **Cllrs Bastiman, Holliday, Smith and Thompson** fail to undertake the due diligence that was required and expected of their roles as Councillors? **Cllr Smith** gives us some further insight when she answered the Tribunal that Nicky Shelton “reached the conclusions on the balance of probabilities and not so that the investigator was sure.” Reading through this testimony, even over eighteen months after the events, one is left with the feeling of dismal incompetence at the heart of the Council. Is Cllr Smith, who is now the Chairman of the Council, really saying that they abandoned the Disciplinary Procedure because the investigator “wasn’t sure” when, in fact, it was the Council’s responsibility to determine where fault lay “on the balance of probabilities.”

Cllr Smith reveals more than she intended in paragraph 30. when she confessed to the Tribunal that the Council “would be left in (the) lurch and in disarray without Mrs Marley.” We’ll leave to one side, for now, the fact that Newby and Scalby is in complete disarray with Mrs Marley and focus on what Cllr Smith revealed in this statement and why the Council’s case at the Tribunal failed so spectacularly. Cllr Smith admitted that the reason for the Review and Staffing Committee deciding to end the Disciplinary Procedure against a member of staff who had been accused of bullying another member staff was that she was too valuable to lose. It didn’t matter that Helen King had made a Grievance Procedure complaint against the Clerk. Newby and Scalby Town Council’s adopted policies (Dignity at Work, Civility and Respect, Disciplinary Procedure, Grievance Procedure or its Mission Statement and Corporate Objectives) mattered not a jot compared with the overarching imperative (as Cllr Smith saw it) of bringing back Mrs Marley (on the 8th December 2023) and getting rid of Helen King at all costs. Never mind Helen King and her employment rights. That is why the Council lost and Helen won but there are also other factors.

For now, let us look at paragraph 31 in which we learn that Helen King and Reg Towse met the Woodsmith Foundation “without authorisation.” In Episode 5, we shall explore the murky business of the Maoni Report:

31. In a further Council meeting on the 20th December 2023, Cllr Thompson was elected Chair. The confidential notes also state that meetings had taken place ‘which were unauthorised with the Claimant and Cllr Towse’, as well as a discussion about how the Claimant would be managed now that Cllr Towse had left his role.

What went wrong and who is responsible? Episode 5.

In Episode 4 we learned from Cllr Smith that the reason for the Review and Staffing Committee ending the Disciplinary Procedure against the Clerk, Mrs Marley, was that the Council “*would be left in (the) lurch and in disarray without Mrs Marley.*” We are now going to investigate the murky business of the Maoni Report which, it will be remembered, decided to recommend to the Council that they should return grants to the Woodsmith Foundation, amongst others. We will also investigate how this was used as a pretext to make Helen redundant. Let us remind ourselves about what Judge Flanagan said in his Reasons for finding in Helen’s favour:

31. *In a further Council meeting on the 20th December 2023, Cllr Thompson was elected Chair. The confidential notes also state that meetings had taken place ‘which were unauthorised with the Claimant and Cllr Towse’, as well as a discussion about how the Claimant would be managed now that Cllr Towse had left his role.*

This is an extraordinary claim even for this council. Their claim is that Reg Towse and Helen King took part in meetings with the Woodsmith Foundation ‘*which were unauthorised.*’ Reasonable people, like our readers, would be entitled to ask themselves the question “Why can’t Reg Towse, as Chairman of Newby and Scalby Town Council, meet with whoever he sees fit?” Back to Judge Flanagan:

33. *Shortly afterwards, the Respondent made the decision, with the assistance of Ms Marley, to undertake an investigation in to the Woodsmith Grant; entitled the ‘Maoni’ report. The result of an investigation was that the investigator determined that the money received from the Grant should be returned. In evidence, the Claimant made complaints regarding the Respondent failing to disclose communications between the Council and the Maoni investigator around this time. In any event, the Respondent later characterised the position as that the money had to be returned, as there had been a failure to comply with the conditions attached to the Grant. It is notable that the Claimant and Cllr Towse had spoken with Woodsmith in November 2023, when there was no suggestion that the money needed to be returned and that no demand for repayment was made at any stage.*

Let us not forget that the *Respondent* is Newby and Scalby Town Council whilst *Ms Marley* is the Town Clerk, who also carries the designation of the Proper Officer and Responsible Financial Officer who, we recall, has been accused of being a bully. The *Claimant* is our friend - the soon to be made redundant, Helen King. It is easy for us to lose our way given all this legal terminology. The Clerk is supposed to provide independent advice to the Council who then decides policy direction. It is important that we hold the independence of the Clerk in mind as we read in 33 above that the Council decided to undertake an investigation into the Woodsmith Grant “*with the assistance of Ms Marley.*”

Our readers, would no doubt question how a Clerk who has not been cleared of the accusation of being a bully can possibly be able to provide fully independent advice to the Council about a matter to which there is such a close, personal connection. So, what is the Maoni Report and who is the investigator who carried out the investigation on behalf of the Council and, of course, ourselves as the precept¹ payers? It turns out that the person carrying out what the council refers to as an “*independent investigation*” (note that Judge Flanagan, for reasons known only to himself, avoids placing the word “independent” in front of investigation) is none other than the Regional Director for the North of England of the Society of Local Council Clerks - the same society which Mrs Marley is a member.

Readers will have to be patient as we move on to Episode 6.

¹ The precept is the amount paid to the council by local residents - currently about £36/year.

What went wrong and who is responsible? Episode 6.

In Episode 5, we learned that Newby and Scalby Town Council decided to set up what they called an “independent investigation” into the Woodsmith Grant with the Town Clerk acting on behalf of the Council. We also learned that the person carrying out this “*independent investigation*” was Mr Ian Morris, the Northern Director of the Society of Local Council Clerks of which, it will be recalled, Mrs Marley is a member. In this Episode, we will examine the process by which the Maoni Report was commissioned and reported to the council before examining in some detail the report’s findings.

Perhaps now would be a good time for our readers to be introduced to the official minutes of Newby and Scalby Town Council. At the Extraordinary Meeting of the council held on 26 January 2024 in the Confidential Business part of the meeting (minute 24/24.1 - shown below) we find that Cllr Thompson made a confidential report “*which was **noted.***” Sadly, for undisclosed reasons, this report was not made available to the Employment Tribunal so we are unable to examine its contents but the minute goes on to **Resolve** (council speak for decide) “*that following a meeting with the Chief Executive of The Woodsmith Foundation, an external investigation was necessary to get an independent view of what had taken place as well as to protect the reputation and integrity of both the RFO/Proper Officer and the Council. Resolved that Maoni Consulting (Ian Morris) be appointed to carry out an investigation at a cost of £1000 plus any additional costs agreed by N&STC. Resolved that it be delegated to the Clerk to enter into and sign a contract with Maoni Consulting.*”

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24/24 CONFIDENTIAL BUSINESS

24/24.1 **Resolved** that the Chairman’s confidential report be **noted**. **Resolved** that following a meeting with the Chief Executive of The Woodsmith Foundation, an external investigation was necessary to get an independent view of what had taken place as well as to protect the reputation and integrity of both the RFO/Proper Officer and the Council. **Resolved** that Maoni Consulting (Ian Morris) be appointed to carry out an investigation at a cost of £1,000 plus any additional costs agreed by N&STC. **Resolved** that it be delegated to the Clerk to enter into and sign a contract with Maoni Consulting. **Resolved** that the Clerk write to the Woodsmith Foundation confirming an external investigation had been commissioned and giving brief details of the scope thereof. As part of the correspondence the Clerk would place on record with the Foundation that in the period 1st June 2023 to 31st December 2023 it had not given any staff or councillors authority to hold meetings with Woodsmith or make offers on behalf of the Town Council. It was **noted** a further meeting would be held in February with the Foundation.

There is an old saying: “Laws are like sausages - it is better not to see them being made.” To that we might like to add the decision making processes of some local councils. Let us, once again, unpick what was going on here. Firstly, Chairman Thompson’s confidential report, under mysterious circumstances, was unavailable for disclosure to the Tribunal. Then we see that “*following a meeting with the Chief Executive of The Woodsmith Foundation*” an “*independent, external investigation*” was necessary “*to protect the reputation and integrity of both the RFO/Proper Officer and the Council.*” Perhaps, on reflection, we should have warned our readers in advance about that last sentence. We hope that you soon recover.

So, Newby and Scalby Town Council decided to delegate Mrs Marley to enter into and sign a contract with Maoni Consulting’s Mr Ian Morris, who is the Northern Director of the same professional association as herself. We have not forgotten that only a few weeks before this, the same Council decided to end “*without explanation*” the disciplinary proceedings against the same Mrs Marley. Sometimes, words fail even the author of this series so let us simply reflect upon the facts outlined above and await the outcome of the Maoni Report which, readers will be amazed to learn, was received by the council exactly one week after this dubious decision. Patience, dear readers as we await Episode 7 and the Maoni Report itself.