**Cawood Parish Council Meeting – “in Camera”**

Held at the Old Boys’ School on Thursday 15th August 2019

following the main Parish Council meeting

Present Cllr Dennon (Chairman), Cllr Shepherd, Cllr Cowling, Cllr Hepworth, Cllr Luker

1. **The Clerk was requested to leave the meeting and Cllr Shepherd took the minutes thereafter**
2. **Apologies for absence were received from the following**

Cllr Wharmby (Vice Chairman) and Cllr Lloyd

1. **Resolved to exclude members of the press and public due to the nature of the business to be transacted in the rest of the meeting by virtue of the Public Bodies (Admissions to Meetings) Act, 1960.**
2. **To accept the minutes of the Extraordinary Meeting held on 22nd July 2019 as a true and accurate record**

The minutes of the Extraordinary Meeting held on 22nd July 2019 were resolved as a true and accurate record with an amendment of the minute taker being added.

1. **To agree the travel expense rate of 0.45p /mile which is reimbursed to Councillors and employees without any tax implications or complications to the Councillor, employee or the Parish Council and to agree the proposed format for a travel expenses claim form**

Both the travel expense rate of 0.45p / mile and the Mileage Claim Form previously shared with Councillors were resolved.

1. **To agree method of determining expenses outlay by setting up expense accounts and debit card with fixed limit**

Resolved that Cllr Cowling would investigate the provision of a finance card with HSBC with a monetary limit of £500 / month for the Handyman. An approved minute from Cawood Parish Council may be required as evidence to set one up.

1. **To accept both amended staff contracts**

The Clerk’s Statement of Particulars were discussed.

Resolved with the following amendments

Probationary Period – “your appointment is not subject to a probationary period”

Job Title – “You are employed as Parish Clerk and Responsible Financial Officer (RFO)”

Two copies to be printed, one signed copy to be retained by the Clerk, the other signed copy to be retained by the Staffing Committee with an electronic copy being saved in the Councillors’ private password protected area.

The Handyman’s Statement of Particulars were discussed but were not resolved. Clarification is to be sought regarding Cllr Wharmby’s discussion with the Handyman following the Extraordinary Meeting of July 22nd 2019.

Probationary period to be amended to state – “your appointment is not subject to a probationary period.”

The word “appropriate” will be added – “Appropriate PPE will be purchased by you when needed with the Council reimbursing for these purchases.”

Pension provision discussed – the Handyman’s earnings means he is a “non eligible worker” who can choose to opt in to a qualifying pension scheme. Resolved that Cllr Dennon would liaise with the Clerk regarding pension compliance for both the Handyman and the Clerk.

The Council’s business debit card will be amended to – “Within one week of the termination of your employment you are required to surrender to the Council all Council property including keys to the container at the Playing Fields, tools and equipment owned by the Council and the Council’s finance card.”

Both contracts (having been drafted based on a model statement of particulars using the terms and conditions in the NALC / SLCC model contract, known as the National Agreement) refer to the Clerk and Handyman being given a copy of the Parish Council’s Health and Safety Policy. Cllr Luker was asked as one of the Councillors responsible for Health and Safety to draft this. He refused stating he didn’t agree with the bureaucratic red tape and stated that employers with less than 5 employees did not need a written Health and Safety Policy. Cllr Dennon advised that NALC strongly recommended this as a matter of good practice (Legal Topic Note 23) and asked Cllr Luker to reconsider. He still refused.

Both contracts refer to the Clerk and Handyman being given a copy of the Parish Council’s Expenses Policy. Cllr Luker was asked to draft this policy in light of his refusal to draft the Health and Safety Policy. Again he cited bureaucratic red tape and refused to draft this policy.

The wording in the dispute resolution sections in both the Clerk’s and Handyman’s contracts were discussed and it was resolved to amend both policies to match the wording in the contracts.

1. **To accept the Handyman’s job description**

It was resolved to accept the Handyman’s job description

1. **To accept the Staffing Committee Terms of Reference**

 It was resolved to accept the Staffing Committee Terms of Reference with the following additions – “additional hours by the Clerk / Responsible Financial Officer and Handyman are to be agreed in advance of being worked by the Staffing Committee” and “the carry forward of up to 5 days annual leave by the Clerk / Responsible Financial Officer and Handyman into the following leave year, is subject to approval by the Staffing Committee.”

Resolved to accept the Staffing Committee Terms of Reference with the following amendment – “meetings will be held at least 2 times a year”

1. **To resolve compliance with Regulation 13 of the Working Time Regulation 1989**

Cllr Shepherd read out the following YLCA advice shared with all Councillors on 30 July 2019

“As previously advised, annual leave is an entitlement, (i.e. days when you don’t work but will still be paid) which should be detailed in an employee’s contract of employment it is not a percentage of salary. It must be taken and an employer must **not**allow an employee to work (and be paid for such work) instead of taking annual leave (and is guilty of any offence if does so) – the relevant legislation is set out below:

The Associations can advise that by virtue of Regulation 13 of the Working Time Regulations 1989; a worker is entitled to a period of leave (the amount of leave entitlement is detailed in the Regulations)

There is an express (statutory) duty (contained within Regulation 16 (1) ‘A worker is entitled to be paid in respect of any period of annual leave to which he is entitled under regulation 13, at the rate of a week’s pay in respect of each week of leave’) and an implied duty of care to (as the employer) to ensure holiday entitlement/ annual leave is taken by its employees.

With regards to payment in lieu of leave not taken;

Regulation 13 (9) states

‘Leave to which a worker is entitled under this regulation may be taken in instalments, but—

(a) it may only be taken in the leave year in respect of which it is due, **and**

(b) it may not be replaced by a payment in lieu except where the worker’s employment is terminated.

The European Court of Justice has stated that the Working Time Directive (from which the Regulations were generated) includes the rule **that a worker must be entitled to the actual rest**.

To pay money in lieu would create an incentive not to take leave and this would be incompatible with the health and safety objectives of the Directive.

The council should be aware that, it is therefore (as the employer) not legally entitled to make such an additional payment and an employer who fails to comply with the Regulations is guilty of an offence (Regulation 29) and liable to summary conviction, to a fine not exceeding the statutory minimum.”

Compliance with Regulation 13 of the Working Time Regulation 1989 was resolved.

*The meeting closed at 11pm.*

Minutes taken by Cllr Shepherd