



Northumberland

County Council

STANDARDS COMMITTEE **14TH JULY 2022**

Preliminary Hearing

Report of Mark Heath, VWV Solicitors on behalf of the Council's Monitoring Officer

Purpose of report

The purpose of the report is to place before the Standards Committee a preliminary issue in relation to 3 Code of Conduct complaints. This issue is a matter for the Committee to determine.

Recommendations

- 1. To determine whether or not the process in relation to the 3 complaints should proceed:**
- 2. If the committee decides that they should proceed, to set a date for a full preliminary hearing.**

Link to Corporate Plan

This report is relevant to the 'How' Priority – namely 'We want to be efficient, open and work for everyone' included in the NCC Corporate Plan 2021 –2024.

Key issues

1. There are 3 complaints under the Council's Code of Conduct that have been investigated and are now progressing to a local hearing.
2. In the light of the S114 Local Government Finance Act 1998 Report by the Chief Financial Officer (CFO) and the report from Max Caller CBE (the Caller Report), both considered at the Extraordinary Meeting of the Full Council on 8th June 2022, there is an issue about whether or not these complaints should continue to a local hearing or not.
3. Normally such a decision would be made by the Monitoring Officer but in view of the nature of the complaints and the context as set out below, the Monitoring Officer (Mark Heath of VWV acting for the Monitoring Officer) has decided to refer the decision to the Committee for decision.
4. Should the Committee decide to proceed, the next step will be a full preliminary hearing to decide those matters that need determination before the local hearing itself can be held.

5. If the Committee decides not to proceed, the proceedings in respect of the three complaints end.

Background

1. Members of the Committee will be more than familiar with both the recent report from the CFO under S114 Local Government Finance Act 1988 and the Caller Report.
2. The S114 report from the Chief Financial Officer referred to unlawful expenditure and recommended a full, independent investigation be carried out into the unlawful expenditure which was unanimously agreed by Councillors at Full Council on 8th June 2022.
3. The Caller Report which was also presented to Full Council on 8th June 2022 makes two particular references to Code of Conduct matters.

The review team noted some thirty conduct complaints, with only two from the public. The majority are between officers and Members and also Member to Member. This is not the prime purpose of the standards process, originally designed for the public to use. Due to these investigations, many senior officers and senior Members have been deemed to be compromised and are unable to communicate with each other on a day-to-day basis. This includes senior officers and elected Members, which has further hampered the effective running of the organisation. It is the opinion of the review team that there is an inappropriate use of the conduct complaint process by senior officers against Members, despite elements of some complaints made by officers against Members being upheld. (para 6.5)

There is excessive use of allegations of bullying, code of conduct breaches and misuse of SARs and FOIs by Members to other Members and also by officers. This has occurred to such an extent that it has prevented reasonable discussion between senior officers and Members of some issues. 'it's got to a stage where you are afraid to say anything you might disagree with for fear of a conduct complaint being made...' It has also commanded excessive resource to undertake investigations, produce reports and resolve (para 7.11)

4. The papers for the meeting on 8th June 2022 contain both sets of documentation and can be accessed here:
<https://northumberland.moderngov.co.uk/ielistdocuments.aspx?CId=346&MId=2042>
5. The Council is required to adopt arrangements under the Localism Act 2011 that lays out the process for dealing with complaints. They can be found on the Council's website at:
<https://www.northumberland.gov.uk/Councillors/Councillors.aspx#complaintaboutanelectedmember>
6. Para 7.2 of that says (omitting those parts deleted and adding my emphasis):
If the Monitoring Officer considers that local resolution is not appropriate, or cannot be achieved, in his opinion, to a satisfactory degree then the Monitoring Officer will report the Investigating Officer's report to the Standards Committee which will

*conduct a local hearing before deciding whether the member has failed to comply with the Code of Conduct and, if so, whether to take any action in respect of the member. **Notwithstanding any of the above the Monitoring Officer will have discretion, following consultation with the Chair of the Standards Committee, not to refer a matter for local hearing if he is of the opinion that the nature of the failure to comply with the Code of Conduct does not justify the cost and time involved in a local hearing or for other reasons particular to the complaint***

7. The Monitoring Officer has instructed Mark Heath of VWV, a firm of Solicitors to undertake her role in relation to managing the process regarding these 3 complaints.
8. He has considered para 7.2 in the context of the S114 and Caller reports and decided that this issue should be decided by the Standards Committee rather than himself on behalf of / in the name of the Monitoring Officer. It is clear that there are great sensitivities and public interest around these matters and given that, together with the recent history at the Council, he has decided that this is a matter for the Committee to decide rather than an Officer/himself.
9. It is not necessary for the Committee to know the details of the complaints or the identity of the complainants and subject-Members (although they have been advised of this meeting and the matter to be considered and may therefore choose to attend the meeting). The issue before the Committee does not turn on the merits or otherwise of the complaints. Indeed, should the matter proceed to a full hearing Members should not at this point be aware of the merits of the complaints themselves or they may be unable to hear the matter. During the course of discussion Members should not be drawn into the merits at this stage.
10. This issue arises by virtue of the recent history of the Council and the S114 and Caller Reports. What is relevant from those matters includes the following:
 - a. These complaints are from senior Officers against Members (1 includes a councillor as a co-complainant).
 - b. The S114 and Caller Reports are matters of public record. The comments in the Caller Report relating to such matters are relevant and germane to the decision. The Caller Report makes particular reference to issues around the Code of Conduct matters "live" within the Council and what he describes as the:
inappropriate use of the conduct complaint process by senior officers against Members, despite elements of some complaints being upheld
 - c. The Caller report also describes NCC as an organisation where there is a culture of mistrust and that its corrosive and pervasive effect were clear. Para 7.11 (see above) is part of the section of the Caller Report which looked at senior Officer/senior Member relationships, which were described as a vacuum. Organisational leadership it also said has deteriorated and is now at a low level. The focus needs to move away from internal battles and the Authority needs to refocus on what it means to be a best value Authority. Part of that includes reviewing the Codes and protocols which regulate Officer / Member behaviours

and relationships and ceasing the current resource hungry inappropriate use of the Code of Conduct by senior Officers.

- d. There are currently a total of 42 current live Code of Conduct complaints of which 4 are from members of the public. Where members of the public are the complainant, these are all in relation to Town and Parish Councils and of the 19 County Complaints, none are from members of the public and all are either senior Officers against Member or Member against Member. The Caller review team specially asked for information as to Officer-Member complaints and Member-Member complaints for the period spanning 3 years preceding the review period and the following information was provided to them on 7th April 2022.

Year	No of complaints
2019	<ul style="list-style-type: none"> • 2 complaints by Parish Councillors against Parish Councillors.
2020	<ul style="list-style-type: none"> • 8 complaints by Officers against County Councillors • 1 complaint by an Officer against a Parish councillor • 4 complaints by County Councillors against County Councillors • 5 Complaints by Parish Councillors against Parish Councillors.
2021	<ul style="list-style-type: none"> • 6 complaints by County Councillors against County Councillors • 2 complaints by Officers against County Councillors • 2 complaints by Parish Councillors against Parish Councillors.
2022 to date	<ul style="list-style-type: none"> • 1 complaint by an Officer against a County councillor • 1 complaint from the Independent Person against a County councillor • 10 complaints by County Councillors against County Councillors • 9 complaints by Parish Councillors against Parish Councillors.

- e. However, unlike many other complaints, these three complaints in question have been investigated. All live Code of Conduct complaints are at different stages and are to be reviewed in light of the Caller Review and the Section 114/114A reports but others are more likely to be determined by the Monitoring

Officer under para 7.2 rather than referred to the Committee (although this should not be ruled out).

11. None of this means that members cannot choose to proceed. But both these reports are relevant and raise issues including those outlined above that the Committee should take into account.
12. Members of the committee may find a timeline of these matters helpful:
 - a. October 2020 – Code of Conduct Complaints submitted to the Monitoring Officer
 - b. Freeths LLP instructed to investigate the complaints
 - c. August 2021, September 2021 and January 2022 - Investigation reports were finalised. One report was revised in April 2022.
 - d. February 2022 – The 17th and 28th February 2022, were listed as potential hearing dates. The 17th February 2022 was confirmed, however, but concerns were raised regarding the allocations of committee places based on political proportionately following the results of the Hexham by election (full Council was yet to agree allocation of committee seats). Accordingly, as the request of [some] elected members, the 17th February 2022 date was vacated. The 28th February 2022, was canvassed as a potential date, but it did not go forward as it was not a confirmed date and not all parties involved were available.
 - e. End March 2022 - VWV instructed. VWV clarified with NCC officers the correct / lawful arrangements (process) to be used under the Localism Act 2011 to process the complaints they were instructed to progress, advised, and subsequently determined one complaint could not proceed for legal reasons, liaised with the subject-members to determine preliminary hearing issues, and reviewed their responses.
 - f. June 2022 - NCC Extraordinary Meeting: S114/114A Report and the Independent Governance Review (the Caller Report).

Implications

Policy	The process involves consideration of the Code of Conduct for Elected Members
Finance and value for money	There are no direct financial implications other than the cost of officer time and instruction of external legal representation
Legal	These matters are governed by the Localism Act 2011 Part 7 and are not Executive Functions under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000
Procurement	N/A
Human Resources	N/A

Property	N/A
Equalities (Impact Assessment attached) Yes <input type="checkbox"/> No <input type="checkbox"/> N/A <input type="checkbox"/>	The Equality Act 2010 has been taken into account in the preparation of this report
Risk Assessment	N/A
Crime & Disorder	N/A
Customer Consideration	N/A
Carbon reduction	N/A
Health and Wellbeing	It is recognised that these matters can cause issues of stress to all parties. Support is available through the Council's internal processes should anyone need assistance.
Wards	N/A

Background / other relevant Committees reports

8th June 2022 – Full Council Reports - the Caller Review and S114/114A - CFO Report

Background papers:

Report sign off.

Authors must ensure that officers and members have agreed the content of the report:

	Full Name of Officer
Monitoring Officer/Legal	Suki Binjal
Executive Director of Finance & S151 Officer	N/A
Relevant Executive Director	N/A
Chief Executive	N/A
Portfolio Holder(s)	N/A

Author and Contact Details

Mark Heath - mheath@vww.co.uk