
REPORT FROM SAMANTHA BROADFOOT KC
INDEPENDENT LEGAL ADVISOR
TO THE STANDARDS COMMITTEE

Introduction

1. I have been instructed as the Independent Legal Advisor to the Standards Committee in respect of 3 Code of Conduct complaints.
2. I last appeared before this Committee on 14 July 2022 in relation to the same complaints. At that stage the Committee was being asked to determine whether or not complaints against 3 councillors should be referred to a local hearing or whether, as a result of the findings in the Caller Report, the complaints against the 3 Members should be brought to an end by the exercise of the Committee's discretion under §7.2 of the Council's Local Arrangements. The Committee were not given details of the complaints and were told that the complaints were from senior Officers against Members (1 included a councillor as a co-complainant). A careful and considered report from Mark Heath, VWV Solicitors on behalf of the Monitoring Officer, was included in the information papers. This set out the background. A copy is attached for ease.
3. I was instructed to attend the meeting as an independent legal advisor.
4. The question that the Committee had to answer turned on the precise interpretation of the power it had under the Council's Local Arrangements. As discussed at that meeting, there is a power, under paragraph 7.2 of the Local Arrangements, to bring the complaints to an end (and not refer them on to a local hearing) in certain circumstances. That power can be exercised if the decision maker "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".
5. My legal advice was that in order to lawfully exercise this power, the decision maker (which in this case was the Committee) was required to know enough about the detail of the complaints to make that decision. My legal advice was that because the Committee

did not have that information, it could not lawfully exercise the power to bring those complaints to an end. Accordingly, my advice was that the choice before the Committee was: 1) pass a resolution setting up a sub-committee who would consider the merits and then decide whether to exercise the §7.2 power to bring the complaints to an end (or send the case to a local hearing); or 2) send the matter to a local hearing because, in effect, there was no other option given where we were in the process. Option 1 did not find any support, and the Committee resolved for the complaints to go forward to a local hearing.

Purpose of report

6. The purpose of this report is to update the Committee on significant recent developments which mean that there is a very strong argument that this decision should be revisited and rescinded. This is an issue for the Committee to determine.

Recommendations

- i. That the Committee resolve to rescind their resolution of 14 July that the three Code of Conduct complaints should continue to a local hearing.

Key issues

7. Complaints were made against 3 Members that they had breached the Council's Code of Conduct. These complaints were investigated. The complaints against each of the Members (who I will call A, B and C) were brought by the former Chief Executive, Daljit Lally and another senior officer. The complaint against C also involves a complaint brought by another Member. The names of the other complainants or those complained about are not relevant for present purposes.
8. The position is now that Mrs Lally has withdrawn all her complaints and has stated that she wishes to move on from the disputes between herself and members.
9. In light of those developments, the other officer has been asked about their position in order to ascertain whether their complaints are still being pursued. After an ambiguous response at the end of August, they have been written to again. Specifically, they have been asked whether they still want to pursue their complaints and whether, if they were invited to give evidence to the Committee (if the matter proceeded to a full hearing), they would do so. At the time of writing no answer has been received.
10. The Member who has made a complaint in relation to C, wishes to pursue the matter.

11. A very significant part of the complaints involve allegations made by and relating to Mrs Lally. As a result of the settlement agreement with her, these parts are now withdrawn. What is left is considerably less.
12. In practical terms the various parts of the complaints now all need to be separated out and, as a matter of process, revised investigation reports need to be put to the outstanding complainants before the matters could proceed further.
13. The withdrawal of Mrs Lally's complaints give rise to a fundamental change in circumstances. The currently ambiguous position of the other senior officer adds to that. Procedurally the cleanest and fairest option is for the Committee to rescind the July resolution to send the 3 complaints forward to a local hearing.
14. This will enable the complaints to be properly disaggregated and then a decision can be taken, in accordance with the Local Arrangements, on how best to proceed with what is left. It may be that once this is done, it becomes clear that the right course would then, for example, for local resolution rather than referring the matter to a hearing.

Background

15. Members of the Committee will be more than familiar with the recent report from the CFO under s114 Local Government Finance Act 1988 and the Caller Report.
16. The s114 report from the CFO referred to unlawful expenditure and recommended that a full, independent investigation be carried out into the unlawful expenditure which was unanimously agreed by Councillors at Full Council on 8th June 2022.
17. The Caller Report, which was also present to Full Council on 8th June 2022, makes three particular references to Code of Conduct matters:

“6.2 The numbers of Freedom of Information requests (FOIs), grievances, complaints, standards and conduct issues between officers and officers and between Members and officers reflect an absence of effective communication in the upper levels of the organisation. Many Members and officers resort to such processes as they feel it is the only way they can effect change. Much of the council business is now done via prolonged email trail, for example, the correspondence regarding the commissioning of this review.”

“6.5 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.”

“7.11 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.”

18. The findings of the Caller review were unanimously accepted by Full Council at the meeting of 21 June 2022 and steps were laid down to implement the various recommendations.
19. On 27 July 2022 there was a meeting of the Full Council in order to discuss and consider (amongst other things) the proposed settlement with the former Chief Executive. At that meeting the Full Council approved the Heads of Terms of settlement with the former Chief Executive. The Heads of Terms included the undertaking that all her complaints against the Council and its members would be withdrawn. This has now occurred. The Heads of Terms also included an express acknowledgement that the settlement between her and the Council was intended to “draw a line under all of the issues that have emerged between them” and “to ensure that both parties can move forward with dignity”.

Analysis

20. The position before the Committee is as follows:
 - a) Given the legal advice given on 14 July, the Committee, once it had rejected the idea of setting up a sub-committee to consider the issue on the full facts, had little choice but to send the three complaints forward. This is so given the stage of the process, the terms of the Local Arrangements and the information before them.
 - b) At that stage there were complaints in existence that were, on the face of it, being supported by the people who had made those complaints.
 - c) The position is now fundamentally different. Significant parts of the complaints have been withdrawn and it may be, depending on the outcome of correspondence with the other senior officer, that they are all withdrawn, with the exception of one aspect that is being pursued by a councillor in respect of one complaint.
 - d) To seek to proceed to a hearing on the basis of the resolution of 14 July:

- i) Would run contrary to the thrust of Caller Report which called for a fundamental re-set and certainly would not support proceeding with complaints that have been withdrawn;
 - ii) Would raise significant procedural fairness issues and be potentially unfair to the persons against whom the complaints were made; and
 - iii) Is likely to seriously undermine the terms of the settlement between the Chief Executive and the Council, as approved by Full Council, in which both sides agreed to draw a line under these (and other) matters and move on.
- e) Rescinding the decision of 14 July does not mean that potential breaches in respect of live complaints of the Code of Conduct are not acted upon. All this means is that the process goes back one step. The options then open to the Monitoring Officer include referring what is left to a local hearing, or seeking local resolution or potentially exercising the §7.2 discretion.

21. Whilst in some respects this may seem rather unsatisfactory, the reality is that sometimes circumstances fundamentally change and it is right that the Committee be able to respond to that in a fair and impartial way.

22. In conclusion, my legal advice is that the safest course of action is to rescind the resolution of 14 July sending the 3 investigation reports to a local hearing, allowing the proper procedure arising as a result of the change of circumstances to run its course, with disaggregated reports and then next steps to be taken accordingly (and in accordance with the Council's Local Arrangements) on the basis of the live complaints now remaining.

SAMANTHA BROADFOOT KC

Landmark Chambers, 5 October 2022