

Stephen Ballantyne

From: Stephen Ballantyne
Sent: 31 August 2023 16:34
To: Olly Scargill (Cllr)
Cc: John Barton; Louise Watson
Subject: RE: Standards Complaints

Dear Cllr Scargill

Further to the email below from Cllr Bones and our conversation on Friday afternoon with respect to the complaints made against you under reference numbers NT14 and 15.2022-23.

It is correct to state that the Independent Investigator's report was completed on 22 May 2023. This is the date that Mr Barton of my office sent a copy of the completed report to you. Since that date, you wrote to me on 26 May stating that you "rather I didn't progress this "as quickly and efficiently as possible"" as you "still have concerns." You also stated that "There is a serious issue that when communicating with the previous Monitoring Officer around Norma's use of Council social media, I was informed there had been no misuse of Council resources. I don't believe the same courtesy has been applied to me. The independent investigator has to seek legal advice to figure out if this was misuse of resources. There is a clear contradiction here and it feels as though I have been given conflicting advice from the previous Monitoring Officer. In light of this discrepancy, I would appreciate if you could review the complaint."

As a result of this request, I undertook the review you requested. Your request for a review of the complaint meant that the complaint process was in effect paused so that I could undertake the review as requested of me by you. Subsequently, I wrote to you on 12 June 2023 following my review and set out the outcome of my review. In my email of 12 June, I stated that the complaints would proceed in accordance with the Local Arrangements document to a full hearing. Notwithstanding my review you responded to me again on 13 June 2023 raising further concerns that: I was not aware of and had not seen any record of you raising the issue in relation to the Elected Mayor's alleged use of Council resources. I replied to you further on this matter on 12 July following discussions with the former Monitoring Officer. You again raised this issue with me on 13 July and I provided a final substantive response on 24 July.

I am of the view that this complaint was paused between 26 May 2023 and at the earliest 12 June 2023 although there is an argument that this pause extended to 24 July.

Mr Barton contacted you by email on 13 July and 21 August. In those emails Mr Barton was, in accordance with the Local Arrangements document, seeking your formal engagement and a response from you to the issues raised in the Independent Investigator's report. On both occasions Mr Barton copied to you the Model Response Forms A to E. You did not reply to Mr Barton's emails nor did you provide the Forms A to E as requested.

On 24 August 2024, ██████████ spoke to me on his own behalf and, so I understand on your behalf. ██████████ suggested to me that the complaints made against him and you were now out of time because the hearing of the complaint had not been concluded within 3 months of the completed investigation report being provided to you. ██████████ followed that up with his email below.

The Local Arrangements document provides that the Pre-Hearing process is predicated on engagement by the subject member of the complaint. In particular, on Page 35 it provides that "Upon the receipt of responses, the Monitoring Officer will discuss the responses with the Chair of Standards Committee and will complete the Pre-Hearing process". It is important to note that the Arrangements document expects a response from the Subject Member and the completion of Forms A to E within 14 days of the completed Investigation report being provided to them. Of course, Members are also required in accordance with the Paragraph 8 of the General Conduct section of the Code to co-operate not just with any investigation but also enabling a matter to proceed to a hearing.

As you must appreciate the Local Arrangements and the process set out therein and adopted by the Authority aims to be fair to both the Subject Member and the Complainant and must comply with the rules of natural justice so as to ensure a fair hearing is undertaken. This is why you were provided with additional time to submit your responses, notwithstanding the pause whilst your concerns were reviewed, to ensure that the process was as fair to you as possible and that your comments on the Investigation report were documented.

Throughout the time since the completion of the Investigation report, I have given regular updates to the Chair of the Standards Committee on the situation in respect of this complaint and other complaints. The Chair has been made aware that the Forms A to E have not been received from you despite more than one request for you to do so.

A Pre-Hearing Process meeting in relation to these complaints has been held with the Chair of the Standards Committee. In the Pre-Hearing Process meeting, I advised the Chair of the current situation and of [REDACTED] email below as it relates to the complaints against you. I also advised the Chair of the provisions I indicated to you when we quickly discussed this issue on Friday afternoon. As I mentioned, the Local Arrangements specifically provide on Page 8 at Paragraph 15 the following:

“The Standards Committee/Sub-Committee, on the advice of the Monitoring Officer, may depart from these arrangements where it is necessary to do so in order to secure the effective and fair consideration of any matter.”

I also advised the Chair of the provisions of Paragraph 8 of the Code of Conduct. This places an obligation on all Members of the Council to “cooperate with any Code of Conduct investigation and/or determination”.

I further advised that Chair that, because of the pause in progression of this complaint whilst I undertook the review you requested, I did not consider that the 3 month timeframe had actually elapsed in relation to these complaints.

The Chair of the Standards Committee noted the situation.

In the light of the circumstances detailed above I advised the Chair that I am of the view that it would be improper if the complaint against you did not proceed to a hearing just because it had not been heard within three months of the completion of the investigation report should a hearing not occur before the 12 September. The Chair noted my advice and then determined to proceed to undertake the Pre-Hearing review.

Please note that when the Standards Committee/Sub-Committee is called to hear this matter as a preliminary matter the Committee/Sub-Committee will be apprised of this issue and asked, if necessary, to formally depart from the arrangements in relation to timescale to allow the hearing to proceed. My advice to that Committee/Sub-Committee will be as set out in this email.

You will therefore be advised of the date of the Hearing in due course. You will be given, in accordance with the Local Arrangements document, at least 14 days’ notice of the hearing date, time and venue as well as a copy of the hearing papers.

Yours sincerely

Stephen Ballantyne

Stephen Ballantyne

Head of Law and Monitoring Officer

Legal Services

North Tyneside Council

Quadrant East, The Silverlink North,

Cobalt Business Park,

North Tyneside, NE27 0BY

North Tyneside Council

Telephone: 0191 6435329



NOTE: This communication may contain confidential legal advice or relate to legal proceedings or is sent in contemplation of legal proceedings. It may be legally privileged and exempt from disclosure under the Freedom of Information and Data Protection provisions.

From: [REDACTED]
Sent: Thursday, August 24, 2023 1:26 PM
To: Stephen Ballantyne <Stephen.Ballantyne@northtyneside.gov.uk>; John Barton <John.Barton@northtyneside.gov.uk>
Subject: Standards Complaints

EXTRNL
Hi Both,

I have already explained this to Stephen this morning but I thought useful to put it into writing too.

In the Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members (May 2022) on page 34 it states under point three 'The Monitoring Officer shall send a copy of the Investigating Officer's final report to the Member, the Complainant and the Independent Persons.' Which John helpfully did in his letter dates 23rd May 2023.

On page 36 of the arrangements it clearly states "The Chair of the Standards Committee, in consultation with the legal adviser will then: - confirm a date, time and place for the hearing, which **must** be within three months from the date that the report was completed" - as the report was completed on the 23rd May 2023 and the hearing has not taken place the arrangements have not been followed.

I have taken advice from the LGA who have confirmed to me that the LGA's model arrangements do include a clause for extending the period beyond three months, however North Tyneside's local arrangements do not include this clause and as a result the hearing cannot now take place as it would be specifically against the local arrangements agreed by Full Council.

The same applies to the complaint against Cllr Scargill.

Please let me know if you have any questions.

[REDACTED]