

Broads Authority

20 January 2023

Agenda item number 13

Recommendations from external review into formal complaint

Report by Monitoring Officer

Purpose

Report on the findings and recommendations of the independent review into the formal complaint by Cllr Fuller.

Recommended decision

- i. Welcome the findings and recommendations of the independent investigation into the formal complaint and in particular that:
“In our view officers acted in good faith and professionally throughout”, and that
 - a. *The Broads Authority’s governance arrangements are regularly reviewed by Internal and External Audit, both external to the organisation... There is continuous improvement underway within the realm of governance.*
 - b. *“any suggestion that there are significant fundamental problems at the Authority and that it is “failing” or similar would be completely incorrect.”*
- ii. In accordance with recommendation a. above and recognising the Authority’s designation as a Best Value Authority it adopts in full the recommendations of the independent review for improvements in the organisation’s governance and procedures as set out in Table 1.
- iii. Refers the recommendations of the VWV report to the Audit and Risk Committee for detailed consideration and implementation.
- iv. The Authority recognises the serious impact this process has had upon its officers’ well-being and, while implementing the practical steps in the recommendations, recognises the duty to officers as their employer and commits to protecting its officers in future from unfounded allegations.
- v. Thank: the Task and Finish Group for its work which has been concluded and its views incorporated into the VWV report; VWV for their independent review and Defra for meeting the costs.

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1. Introduction

- 1.1. As Stage 3 of the organisation's Formal Complaints Process, the Authority's former Monitoring Officer commissioned an independent review into a complaint by Cllr Fuller regarding the handling of two minor planning applications.
- 1.2. From 1 January 2023, I became the Authority's new Monitoring Officer. Following receipt of the independent review, I responded to the Complainant on 5 January 2023 to conclude the matter by dismissing the complaints. On the same day I circulated a copy of the report to Members, DEFRA and the Chief Constable of the Norfolk Constabulary together with a covering letter.
- 1.3. The report identifies some minor improvements to the Authority's governance and processes which I recommend that the Authority adopts.

2. Findings

- 2.1. I have reproduced ten of the more substantive findings below.

Finding 1. *In our view, contrary to the Evidential Review and other assertions, the imposition of the condition was not an unlawful act. It is standard practice for conditions which are deemed appropriate to be imposed on any planning permission.*

Finding 2. *Whilst the intention was correct, the imposition of Condition 6 (as a condition and as drafted) was an error but minor in nature. The intention behind Condition 6 is relatively clear, i.e. a belt and braces approach to seek to avoid conferring any lawful use. But it should have been an informative rather than condition and worded better.*

Finding 5. *There was no evidence to support the suggestion that the Authority had an ulterior motive for its actions (in respect of the way in which it approached and imposed Condition 6).*

Finding 6. We did not find any evidence to support the allegation that the Broads Authority's planning function was not fit for purpose.

Finding 7. The evidence from published information on the Authority's website in the form of planning performance statistics, customer satisfaction surveys, and the position on the local plan, enforcement and the preparation of a design guide is of a local planning authority meeting the Government's targets.

Finding 9. The suggestion that the Authority had acted unlawfully under S101(4) LGA 1972 as the effect of S101(4) is that any scheme of delegation which purports to prevent a calling in by members is Ultra Vires, is incorrect.

Finding 11. The alleged mishandling of these minor planning applications clearly did not meet the test of serious misconduct and was an inappropriate vehicle for raising such governance matters.

Finding 12. The allegations did not amount to a prima facie case of Misconduct in Public in Public Office.

Finding 13. The Evidential Review should not have been released to the Complainant.

Finding 14. The comments made by the police officer on governance matters at the Authority should not have been made.

2.2. It is also worth noting that Mr Heath comments:

"In our view officers acted in good faith and professionally throughout."

and that:

"The Broads Authority's governance arrangements are regularly reviewed by Internal and External Audit, both external to the organisation... There is continuous improvement underway within the realm of governance."

and,

"... any suggestion that there are significant fundamental problems at the Authority and that it is "failing" or similar would be completely incorrect."

3. Recommendations

3.1. The report makes 9 recommendations which are listed in Table 1 below with the action I am recommending the Authority takes.

Recommendation	Recommended Action
Recommendation 1. The Authority's ongoing statutory duty to achieve Best Value (continuous improvement) provides a suitable approach to address the specific issues raised in relation to the planning function.	Agree. Adopt and continue to place before the Planning Committee regular updates on performance statistics and

Recommendation	Recommended Action
	feedback for satisfaction surveys of applicants.
<p>Recommendation 2. We recommend that the existing "call-in" arrangements for planning applications should be reviewed and that when the interpretation of delegated powers is challenged it should be a matter that the CEO and Chairman of the Planning Committee jointly take a role on, and if they cannot resolve the issue the matter is placed before the Planning Committee.</p>	Agree. Adopt in revised arrangements.
<p>Recommendation 3. We consider that the effective consolidation of the key documentation will be of benefit.</p>	Agree and adopt. Monitoring Officer to work with Senior Governance Officer on bringing all constitutional documents together.
<p>Recommendation 4. Code of Conduct matters should be separated from the Audit and Risk Committee. The Audit and Risk Committee should also take on the explicit role of considering members' concerns regarding governance and generally oversight of the Authority's governance arrangements.</p>	Agree and adopt. Monitoring Officer to work with Senior Governance Officer to review terms of reference for Audit and Risk Committee and terms of reference for change from Hearings Committee to Standards Committee.
<p>Recommendation 5. The Monitoring Officer should consider issuing additional guidance / training regarding members' interests and how the policing of behaviour and Code of Conduct matters is best addressed</p>	Agree and adopt. Monitoring Officer to review guidance and training for Members.
<p>Recommendation 6. Local Authority appointees should be appointed through a similar merit-based process to that used by the Government for Secretary of State appointments. This reflects our view that there should be parity of treatment for all members, whether LA appointees or SoS appointees. The issue of an independent chair is also worthy of reflection provided s/he has a regional rather than national focus.</p>	Agree and refer to Defra for consideration in the context of the Landscape Review. This was one of four main themes to emerge from the workshop held on 24 February 2022 to consider the Authority's response to the public consultation on the Government's response to the Landscape Review, and on which the Chairman wrote to Lord Benyon on 7 April 2022.

Recommendation	Recommended Action
<p>Recommendation 7. Audit and Risk Committee, with their oversight of governance, should reflect upon issues regarding relationships and the underlying governance mechanisms behind those.</p>	<p>Agree. Monitoring Officer to work with Senior Governance Officer to review terms of reference for Audit and Risk Committee.</p>
<p>Recommendation 8. The Authority should review and change its complaints process removing the automatic obligation on the Monitoring Officer to investigate where there is a concern about unlawful behaviour or activity.</p>	<p>Agree and adopt change to Complaints Process.</p>
<p>Recommendation 9. Members can raise governance concerns with Audit & Risk Committee and so should not be able to raise such concerns through the complaints process or any other route. Indeed, the ability for members to raise any issue when acting in their capacity as a member of the Authority through the Authority's complaints is something to review.</p>	<p>Agree. Monitoring Officer to work with Senior Governance Officer to review terms of reference for Audit and Risk Committee and revised arrangements.</p>

4. Financial implications

- 4.1. This matter began with the handling of two minor planning applications, the first in 2019, and subsequently evolved into a complaint to the Police. It has absorbed substantial time and resources from the Authority. The costs of the independent review are being met by Defra.

5. Risk implications

- 5.1. The Corporate Risk Register contains the following risk: *“Reputational damage caused by comments or actions by Authority members or officers, with consequent harm to relationships with stakeholders and/or undermining of public confidence in Authority.”* A wide range of tasks mitigate the risks and for the next twelve months a *“Complete review and update of constitutional documents (incl. Code of Conduct Complaints Process) and supporting guidance after independent investigation is complete”* is programmed.

6. Conclusion

- 6.1. The independent review of this formal complaint brings the matter to a conclusion and the minor suggested improvements to governance and processes can be implemented in the next few months without difficulty.

Author: Jonathan Goolden

Date of report: 10 January 2023

Background papers: [Independent review of complaints – Mark Heath, VWV Solicitors](#)