

CAIRNGORMS NATIONAL PARK AUTHORITY AUDIT & RISK COMMITTEE

FOR DECISION

Title: GOVERNANCE: HANDLING BOARD MEMBER COMPLAINTS – LESSONS LEARNED REVIEW

Prepared by: David Cameron, Director of Corporate Services

Purpose

This paper presents a review of lessons learned on the handling of complaints against Board members, following the handling and consideration of such complaints in July and August 2020. The paper seeks decisions on the Authority's future approach to handling complaints received by the organisation against board members.

Recommendations

The Audit & Risk Committee is asked to:

- a) Agree the Authority's complaints handling procedure continues to cover complaints made against board members;**
- b) Agree the scope of amendments required to the Complaints Policy for handling complaints against board members as set out in paragraph 12;**
- c) Agree the Authority's Code of Conduct should be amended to include a perception test similar to that of the Councillors' Code of Conduct;**
- d) Agree changes to the Authority's Code of Conduct should be made to include a "perception test" adopting similar wording to that already in place in the Councillors' Model Code;**
- e) Consider any further changes which may be required to the Authority's Code of Conduct.**

Background

- I. The Director of Corporate Services, working with the Convener and Audit and Risk Committee (ARC), handled a number of complaints about a Board member's comments on social media during late July and August 2020. The processes employed followed the complaints procedure and other governance structures in place at the time of the complaint handling. The complaints were all dealt with at the time and this report does not reopen those complaints in any way. The Audit and Risk Committee agreed at the time of determining action on the complaints that the process of handling Board complaints, together with associated supporting policies, should be reviewed to determine whether lessons may be learned from the processes deployed.

2. This paper presents the outcome of a review of the procedures deployed together with proposed actions for consideration by the Committee within its remit on governance.
3. Advice was sought from On Board Training, who have been involved in Board training on the Code of Conduct, in developing this lessons learned review of handling complaints against board members. Their advice is referred to in the relevant sections of this paper.
4. This review is conducted in the context of the Authority's approved and adopted organisational values: "*the CNPA is an open, inclusive, innovative and professional organisation that behaves with integrity.*" The aim of the review is to arrive at any changes needed in our current handling of complaints against Board members which further enhances our organisational demonstration of those values and contributes to our corporate aim of being the best small public body in Scotland.

Authority Role in Handling Complaints about Board Members

5. The first key point to consider is whether it is appropriate for the Authority to include the handling of complaints on board members within our internal complaints procedures.
6. In submitting the complaint to the Ethical Standards Commission (ESC), I note a question is asked by the ESC on whether the complainant has already completed the public body's complaints process. There seems to be at least some expectation in this regard on the part of the ESC that public bodies will have some role in handling complaints made on the actions of the members of boards of public bodies.
7. Advice on this matter from David Nichol of On Board Training confirms a general expectation that public bodies will have a first point of response for complaints made about board members. The view of this expert in the field is that there is an expectation on the part of the Scottish Government, the Minister and the public that poor behaviours and actions on the part of Board Members will be dealt with by the Authority.
8. In conducting this review I have also considered the approach taken by other organisations. Documentation on this matter has tended to be more readily available on local authority websites than NDPBs, which would give a more relevant comparison. However, the key consideration around a public body's role in handling complaints against councillors and members of public bodies is considered relatively transferrable between these sectors. There are a range of approaches taken by local authorities in Scotland on handling complaints against councillors, with some deploying their own internal complaints handling procedures for such complaints while others do not have such a process. The approach in one Council considered is to assess the complaint and support the complainant to make a complaint to the ESC where the Monitoring Officer (Standards Officer) believes there may be grounds to support the complaint. Where it appears the complainant does not intend to take the matter further by complaining directly to the ESC, and where the Monitoring Officer believes there are grounds to do so, they may make a report to the Chief Executive for

consideration of whether the organisation should itself make a referral / complaint to the ESC.

9. Overall, my recommendation is that the Authority should continue to deal with complaints against Board members received by the Authority. This seems a key mechanism by which we uphold our organisational values, monitor public perception, and a first point of internally handling such correspondence. On the basis of advice received, the ESC would not expect all such complaints to be directly referred to them. The example the Council presented here also has some degree of internal handling and review, with potential for referral of complaints by the organisation to the ESC. Other local authorities do have a fuller internal complaints handling procedure.

Complaints Policy

10. The complaints policy does cover complaints about Board members at para 90; “A complaint about a Board member should be referred to the Corporate Services Director, who is the Standards Officer.”
11. However, there is no documented processes by which such complaints will be handled beyond this. As such, my recommendation is that a fuller procedure for handling complaints made against board members should be developed and added to a revised complaints handling policy and procedure.
12. The suggested handling of complaints against board members should cover the following processes:
 - a. Refer to Director of Corporate Services with potential outcomes:
 - i. Invalid – dismiss;
 - ii. Valid – no immediate grounds for support / ‘not upheld’;
 - iii. Valid – evidence of grounds for complaint – investigate;
 - b. Following Director of Corporate Services investigation:
 - i. No grounds for complaint – letter ‘not upholding’ complaint with potential for complainant to take matter up with ESC;
 - ii. Some grounds to support complaint around expected standards of behaviour and Cairngorms NPA values – report to Convener recommending internal communication to highlight grounds for complaint to member and expected improvements;
 - iii. Significant grounds to support potential breach of Code – referral to an appropriate member Committee or group with relevant experience to determine outcome.
 - c. With regard to b.ii, the Convener may:
 - i. Not agree with report recommendation and take no action – complaint closed;
 - ii. Agree with report and write to member with improvement actions – complainant notified of outcome in general terms and complaint closed;
 - iii. Consider the matter to be more serious than suggested and invoke b.iii – complaint remains open.

- d. With regard to b.iii, the appropriate member Committee or group will take final decision on any complaint escalated to it and:
 - i. Dismiss the complaint giving reasons for doing so, with complainant notified of outcome to close complaint;
 - ii. Agree that internal notification of improvement actions by the member in question are adequate, with action taken forward by Convener and complainant notified in general terms of outcome to close complaint;
 - iii. Agree the complaint may have more significant implications as regards the Code of Conduct and refer the matter to the ESC.
13. A key proposed change to processes above is a “middle ground” course of action for internal action which focuses on the Convener acting to raise the matter with the board member in question and remind them of their expected levels and standards of behaviour as a Cairngorms NPA Board member. This is not an action in terms of any breach of the Code of Conduct. The Standards Commission is the only body to exercise judgement on members’ potential breaches of the Code of Conduct. However, internal processes of action appear to be a key mechanism for upholding the values of the organisation and being able to close internal complaints to the potential satisfaction of complainants where there are grounds to do so.
14. Reference is made here to potential involvement of an appropriate member Committee or group in the complaint resolution process. The ARC handled the complaint in summer 2020 under the responsibility for overseeing governance within its terms of reference. Board Committee structures and terms of reference are currently under review and the appropriate interaction of these proposed complaints resolution processes will be considered within that revised structure.
15. It may also be appropriate to consider within the finalisation of the process that a subset of a Committee membership may consider such complaints rather than the full committee membership, in order to contain the flow of confidential information.
16. I therefore recommend the actions set out here are incorporated into amendments to the Complaints Policy, to include a flow diagram of routes complaints may take, for subsequent approval by the Committee.

The Code of Conduct

17. A key outcome of the process undertaken in July and August was a realisation, following helpful discussion with the Standards Commission, that unlike the Councillors’ Code of Conduct, the Model Code of Conduct for members of Non Departmental Public Bodies (NDPBs) does not include a “perception test”. This is a test of whether a member of the public, acting reasonably, might perceive the action of a member of a public body to be undertaken in their role as a member of the body rather than another role or acting in a private capacity. The Councillors’ Code includes a statement that the Code applies to “*all situations where you act as a Councillor or are perceived as acting as a Councillor*” and this perception test was not included in the model Code on which the Authority’s adopted code is based.

18. As Standards Officer, I suggest this is a key gap in the Authority's Code which, having recognised it, I recommend should be addressed through a revision to the Authority's adopted Code of Conduct.
19. More generally, and not linked to the specifics of the complaints considered in 2020, there are a range of behaviours and actions generally considered to be unacceptable within public organisation governance that are not currently well covered by provisions of the Model Code for NDPBs. For completeness while reviewing the adequacy of the Authority's Code of Conduct at this time, these areas include:
 - a. Refusal to accept collective responsibility for Board decisions;
 - b. Preventing acting as a representative or delegate of groups or organisations who may have elected or nominated a member;
 - c. Making public comment not in line with the body's policies or strategy;
 - d. Inappropriate representation on social media;
 - e. Poor attendance, preparedness or contribution at Board and Committee meetings.
20. The Committee may wish to consider at this point whether the Authority's values would be better upheld by the inclusion of a general requirement in our Code of Conduct to:
 - a. prevent bringing the Authority into disrepute and /or
 - b. uphold the decisions, strategies and policies of the Authority at all times.

Next Steps

21. Taking any agreed work forward on the Code of Conduct will require interaction with the Scottish Government Sponsor Hub and Public Bodies Team.
22. Members will be aware that a consultation on changes to the NDPB Model Code recently closed and there may be action over the course of the year to instigate a review by all NDPBs of their Code of Conduct against a new Model Code following completion of any revisions in light of input to the consultation exercise. Some of the above issues may be resolved through that process. However, it could be a year or more before any review of the Authority's Code of Conduct which is dependent on the issue of a revised Model Code is taken forward.
23. The Committee may therefore wish to consider which steps should be taken regarding a more urgent and wider review of the Code of Conduct.

David Cameron
26 February 2021
davidcameron@cairngorms.co.uk
