

INITIAL ASSESSMENT OF COMPLAINT **DECISION NOTICE**

Subject Member: Cllr Steve Count – Cambridgeshire County Council

1. Background

- 1.1 On 20 August 2018 Stephen Rix, Interim Monitoring Officer at Central Bedfordshire Council, who was deputising for the Monitoring Officer while she was on holiday, received a formal complaint from Cllr Nichola Harrison, ("the Complainant"), which alleged that Cllr Steve Count ("the Subject Member") had failed to act in accordance with the council's code of conduct. The Subject Member is the Leader of Cambridgeshire County Council ("CCC") and group leader of the Conservative group on the complaint concerned actions taken (or not taken) by the Subject Member in relation to the resignation of another Conservative councillor, Cllr Paul Raynes who was leaving his role as a councillor to take up a senior officer position on the Cambridgeshire and Peterborough Combined Authority ("CPCA"). The post was a politically restricted post which meant that he could not continue to also be an elected member.
- 1.2 The Complainant alleges that the Subject Member should have sought Cllr Raynes's resignation in a more timely manner and by not doing so *"he appears to have acted for partisan reasons and without the integrity needed to guarantee the independence and reputation of the county council"*.

2. Evidence Considered

- 2.1 The following documents and information were considered for the purposes of this complaint:
- 2.1.1 Original complaint email dated 20 August 2018 from the Complainant to Fiona McMillan (Acting Monitoring Officer for CCC at the time) and copied to a number of member including the Monitoring Officer of CPCA, stating that *"having followed the news about Cllr Raynes's appointment as a senior officer of the CPCA I am very concerned that there has so far been no announcement of his resignation as a county councillor....I simply want to know that he is off the premises as he clearly has a conflict of interest in continuing his political role. If the resignation is delayed, it will look as though he and/or the Conservative group are trying to keep him in place for their own purposes. Moreover the public will be extremely concerned if he continues to collect an allowance from CCC."*
- 2.1.2 Email response from Stephen Rix to the Complainant on 20th August stating that *"having been in contact with Fiona today I can confirm that both Cllr Raynes and the Council are fully aware of these issues."*

- 2.1.3 Email response from the Complainant to Stephen Rix on 20th August lodging a formal complaint against both Cllr Raynes and the Subject Member and clarifying and expanding on her complaint and giving notification that she would be publishing this complaint.
- 2.1.4 Email from Kim Sawyer, the Monitoring Officer of the CPCA to the Complainant on 28th August 2018 setting out the terms of s.1 of the Local Government and Housing Act 1989 which referred to the disqualification and political restriction of certain officers and staff: "*A person shall be disqualified from becoming (whether by election or otherwise) or remaining a member of a local authority if he holds a politically restricted post under that local authority or any other local authority in Great Britain.*" She confirmed that she was asked by Cllr Raynes for advice on interpreting this section prior to him accepting the post and that she had advised that he did not hold a politically restricted post until his contract with the CPCA commenced on 14th September and that his duty was to resign before that date. This email was copied in to the same respondents as the Complainant's initial email which included the Subject Member.
- 2.1.5 Email response from Fiona McMillan to Cllr Harrison on 4th September setting out the response received from Kim Sawyer, Monitoring Officer of the CPCA which set out that Cllr Raynes did not "hold" a politically restricted post until such time as his contract with the CPCA started on 14th September 2018 and therefore his duty was to resign from CCC at some stage before this date. She confirmed that she concurred with this advice and advised the Complainant that there was therefore no legal requirement for him to have resigned before this and that both she and the Chief Executive of CCC had been made aware of the situation and Cllr Raynes had received advice. She advised that as Cllr Raynes had resigned from CCC on 21 August with immediate effect it was not possible to proceed with a code of conduct complaint against him. She asked if in the light of this the Complainant wished to withdraw her complaint against the Subject Member.
- 2.1.6 Email response from the Complainant stating that "*my concerns are not concerned with the legality of what has taken place but with what I believe to be breached of the Code of Conduct....I do wish the complaint against Cllr Count to be properly considered.*"
- 2.1.7 Subject Member's response; Cllr Count and Cllr Raynes were notified of the complaint by Stephen Rix on 21st August 2018.
- 2.1.8 Email from Cllr Raynes to Stephen Rix dated 21 August stating that he had already resigned that day and that "*I only posted my acceptance of the new job yesterday afternoon so my new employer may not even have received it yet. I don't think I could have been expected to resign before actually reading the contract, agreeing the terms and conditions and formally accepting the job. News of my appointment got out through a leak, not an announcement.*"

2.1.9 Email from the Subject Member to the Complainant dated 28 August following the receipt of the email from Kim Sawyer stating: "*The advice received appears to clearly vindicate me. You called for me to resign publically so I wish to ask what public action you now plan to take to rectify your unfair portrayal of me and my standards.*"

2.1.10 Email from the Complainant to the Subject Member on 30th August stating: "*Kim Sawyer's email on behalf of the Combined Authority is not relevant to my complaint. The complaint is addressed to the county council's monitoring officer and concerns what I believe to be a breach of the county council's Code of Conduct.*"

2.1.11 Email from the Subject Member to the complaint dated 30th August 2018 stating: "*Considering the factual nature of the Combined Authority's response I cannot believe you have not withdrawn your complaint to avoid wasting the County Council's scant resources. If you cannot yet see that you have misjudged this I suggest you discuss this with your leader, as to whether she considers you are wasting the county's resources or not.*"

2.1.12 Members Code of Conduct

3. Jurisdiction

3.1 For a complaint to be considered in connection with the Member's Code of Conduct, the following test must be satisfied:

- a) the complaint was made against a person who, at the time the alleged action took place, was a member of Cambridgeshire County Council; and
- b) the Subject Member had signed up to the Members' Code of Conduct in force at the time the alleged action took place; and
- c) the Subject Member was conducting the business of their authority or acting, claiming to act or giving the impression of acting as a representative of the authority.

3.2 It is considered that all three limbs of this test are satisfied in this matter.

4. Initial Assessment Decision

4.1 The Independent Person and Monitoring Officer have considered whether the actions of the Subject Member summarised in paragraphs 1.1 and 1.2 above could constitute a breach of the following provisions of the Members' Code of Conduct.

4.2 In assessing whether there is a breach or potential breach, and in view of this whether further action is warranted, the complaint must be considered from an objective view point bearing in mind the provisions of the Members' Code of Conduct. The Complainant does not state which sections of the Code may have been breached.

4.3 Having considered the allegations, the relevant sections of the Code are therefore believed to be:

- The preamble to the Code relating to the Nolan Principles which states "Councillors....should act in an open and transparent manner and should not do anything which would prejudice the reputation of the Council."
- Section 2.2 of the Code which states: "You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute."

4.4. The Independent Person and Monitoring Officer considered the following:

- a) Whether the Subject Member breached the Code of Conduct by failing to ensure Cllr Raynes's "timely resignation" and in doing so acted in a partisan way and without the integrity needed to guarantee the independence and reputation of the county council." The Subject Member's involvement with Cllr Raynes's resignation is unclear and not evidenced by the Complainant. However it was assumed that as group leader he was made aware by Cllr Raynes of the offer from the CPCA and what actions he planned to take.
- b) Whether the advice received by the Complainant from the Monitoring Officer of the CPCA and the Acting Monitoring Officer of CCC in relation to the legality of Cllr Raynes's actions was indicative that the Code of Conduct had not been breached as if Cllr Raynes acted entirely within the law then how could the Subject Member have acted inappropriately or the reputation of the council be prejudiced? Is the fact that the news of the appointment was leaked before Cllr Raynes had the opportunity to formally accept the offer and then resign the responsibility of the Subject Member?
- c) One of the factors to be taken into account as part of the initial assessment of complaints is whether the complaint is "politically motivated." The Complainant is a Liberal Democrat councillor and the Subject Member is the Leader of the Conservative group. The Subject member published her complaints online as soon as they were lodged.

4.5 In summary, the Independent Person's view is that:

- a) Whilst the Subject Member was no doubt made aware of Cllr Raynes's offer from the CPCA the complainant has provided no evidence that the Subject Member failed to ensure Cllr Raynes's "timely resignation".
- b) The legal advice received by the Complainant from both the Monitoring Officers (the CPCA and CCC) in relation to the legality of the situation "*are indicative that the code of conduct has not been breached. The information that I have been provided with tells me that Cllr Raynes's contract with CPCA started on 14th September 2018 and that his duty to resign was at some stage before that date. In fact Cllr Raynes resigned on 21st August, the day after he*

posted his acceptance of the post. This seems to me to be entirely reasonable and timely. It cannot be the responsibility of the Subject Member that news of Cllr Rayne's appointment was leaked before he had the opportunity to formally accept the offer."

c) It was not possible to form a view on whether this complaint was politically motivated from the evidence.

4.6 The Independent Person advised that in her opinion there was no apparent breach of the code and therefore no further action should be taken.

4.7 The Monitoring Officer concurs and therefore no further action will be taken.

Approved by: Gill Holmes (Independent Person)
Fiona McMillan (Monitoring Officer)

Dated: 4 November 2018