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29<sup>th</sup> August 2014

**Name of Cabinet Member:**  
Ethics Committee

**Director Approving Submission of the report:**  
Executive Director, Resources

**Ward(s) affected:**  
None

**Title:**  
Code of Conduct update

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**Is this a key decision?**  
No

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**Executive Summary:**

This report updates members of the Ethics Committee on alleged and upheld breaches of member codes of conduct on a national and local level.

**Recommendations:**

The Ethics Committee is recommended to:

1. Consider the cases referred to within the report and make any consequential recommendations deemed appropriate.

**List of Appendices included:**

None

**Other useful background papers can be found at the following web addresses:**  
<https://www.gov.uk/government/collections/code-of-practice-on-local-authority-publicity>

<http://thanet.gov.uk/media/1496880/Thanet-CPC-Final-Letter-280414.pdf>

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

## **Report title: Code of Conduct update**

### **1. Context (or background)**

1.1 The Council's Ethics Committee met on 20<sup>th</sup> February 2014 and it was agreed that the Monitoring Officer would provide a regular update on cases relating to the Members' Code of Conduct on a national basis. This is to facilitate the Ethics Committee's role in assisting the Council with its duties under section 27 of the Localism Act 2011 to promote and maintain high standards of member conduct.

### **1.2 The national picture**

1.2.1 Since the abolition of the Standards Board for England, national statistics and case reports are no longer collated. Therefore the cases reported are taken from general research.

1.2.2 Cases reviewed include consideration of alleged breaches on the disclosure of confidential information, failure to comply with aspects of a local Code on declaring interests, and bringing the office of councillor into disrepute. The cases also include reduction by the High Court of a disqualification period for a member, the result of a Peer Review on a Council where the Standards Committee independent members had resigned en masse (as referred to in the report to the last meeting on 20th February 2014), and the issue of notices by the Secretary of State for alleged breaches of the Local Authority Publicity Code. Extracts from the published record of cases, where available, have been attached as an Appendix to this report and with an overview set out below.

#### **1.2.3 Disclosure of Confidential Information**

The Standards Committee of Stockton on Tees Borough Council issued a decision notice on 2<sup>nd</sup> May 2014 following a hearing of a complaint against a councillor. The Committee found that the Councillor had breached paragraph 6 of the Council's Code of Conduct which requires Members not to disclose information provided to them in confidence. He had disclosed, through his blog, counsel's opinion obtained in connection with a planning appeal when under express instructions not to do so. The Committee imposed the following sanctions:

- Publication of the Decision Notice in a prominent place in the Council's building and the Council's website;
- Report of the decision be made to Full Council and the Planning Committee (of which the Councillor was a member);
- An undertaking be sought from the Councillor that the behaviour would not be repeated, and if not provided, the Councillor be prevented from receiving any exempt, confidential or legally privileged council information for the remainder of his term of office;

- Appropriate advice and guidance be given regarding paragraph 6 of the Code (relating to disclosure of confidential information) and a further copy of the Council's Confidential Information Protocol; and
- Copies of the Protocol to be re issued to all Members.

The Committee took account of the fact the breach was deliberate and, not only was no remorse or an apology shown or given, the Councillor had stated he would repeat the behaviour again.

#### **1.2.4 Declaration of interests, failing to treat others with respect and bullying**

On 15th May 2014, East Devon District Council's Hearings Sub Committee issued a Decision Notice in relation to a complaint against a Newton Poppleford and Harpford Parish Councillor. The Councillor was found to have breached the paragraphs of the Code of Conduct relating to personal interests, treating others with courtesy and respect and not bullying others.

The Sub Committee concluded that the Councillor had acted improperly by declaring a personal interest (not a DPI) and then seeking to influence the decision of the Council on that business. Whilst they did not find he had acted in his private interest, they found that there had been a conflict and he had not taken steps to resolve it in such a way as to properly protect the public's interest. He had therefore breached the Code by having a personal interest in planning application land and, by speaking and voting, he has sought to influence improperly the decision relating to the land.

The Sub Committee did not impose any sanction on the Councillor. Instead they followed their normal procedures of publishing the decision on their own and the Town Council's website and issuing a direction that training is offered to all members of the Town Council on governance issues.

#### **1.2.5 Bringing the office of Councillor/authority into disrepute**

In a second case, East Devon District Council's Hearings Sub Committee on 24<sup>th</sup> April 2014 issued sanctions against a Councillor following comments she made at Exmouth Town Council's Annual Meeting during the acceptance speech of the new Mayor and subsequent parts of the meeting. She told the Mayor she was not interested in what he had to say, she had not voted for him and would never support him. The sanctions imposed included

- censure and reprimand
- apology to be delivered at the next Town Council meeting,
- publication of findings and
- guidance and training from the Monitoring Officer.

The Sub Committee took particular note of the Investigating Officer's view that to cause interruptions at such a ceremonial occasion was especially unreasonable

and that in doing so the Councillor had brought the office and/ or Council into disrepute.

### **1.2.6 Disqualification**

On 15th May 2014 the High Court (Administrative Court) delivered its judgement on an appeal concerning the imposition of a disqualification order imposed against an elected member of a Welsh Council. The disqualification was imposed prior to the implementation of the Localism Act.

The Councillor was originally disqualified after a 58 day hearing of the Adjudication Panel for Wales concerning allegations that in 2007-2009 he failed to show respect and consideration for officers of the Council by using bullying and harassing behaviour. The Councillor exercised his right to appeal to the High Court which considered a number of issues including the evidential test, freedom of speech and sanctions imposed. Whilst in a different jurisdiction, the issue of the judgment confirms that the correct burden of proof to be applied in cases involving alleged breaches of the various codes of conduct is the balance of probabilities test, and not, (as the elected member put forward), the criminal burden, beyond all reasonable doubt.

The judgment also re-affirmed that Members could rely on the principles of free speech in political debate when defending disrepute allegations, but set in context what was regarded as acceptable and what was not. The Court reduced the disqualification period from 2 ½ years to 18 months, as it considered the period of disqualification imposed to be excessive in all the circumstances.

Whilst there is nothing new in the judgment, it is useful for members of this Committee to be familiar with the principles used by the High Court when reviewing sanctions imposed on elected members i.e. the minimum sanction consistent with the aims of maintaining standards in public life, and the evidential test which should be applied if determining allegations of breach of the Code of Conduct, namely on the balance of probabilities.

### **1.2.7 Peer Review**

At the meeting on 20<sup>th</sup> February 2014, it was reported that the independent members of Thanet District Council's (TDC) Standards Committee had resigned following a report issued on the behaviour at Council meetings and the general culture of mistrust and disrespect at the Council.

A Local Government Association (LGA) Peer Review has since taken place at the Council, and its findings call on the Council to address the 'toxic' behaviour of members.

An extract from the Peer Summary is set out below:-

*..... you have not addressed some behaviours which we described as 'toxic'. We found examples of antagonism, hostility, homophobia and discourtesy in the way that some councillors behave. There is an unwillingness to respect the*

*confidentiality of some aspects of council business which are appropriately confidential. Many unfounded allegations have been made against senior officers who, whilst being held to account, are also owed a duty of care by the council. This behaviour must be tackled if you are going to improve community confidence in the council.....*

*We heard some views that implied that the Council's reputational difficulties were entirely the result of the behaviour of a small number of councillors. Whilst we agree that some of those behaviours are extremely corrosive, we witnessed the poor behaviours of many other councillors during our visit. Barracking, bullying and talking over others are behaviours which also damage the council's reputation. There are things that all councillors can and should do to set an example and improve the reputation of the council including listening respectfully to the contributions of others, avoiding the use of personal insults and involvement in councillor training and development. A change in behaviour will help to change your reputation.*

*An improved reputation built on new standards of behaviour is the most important challenge you face'*

The Review was published on 28th May 2014, following visits from 11<sup>th</sup> to 13<sup>th</sup> March 2014, and on 12<sup>th</sup> May 2014 the Council's Leader resigned, referring to the fact that the actions of a tiny minority of councillors had overshadowed all the good work of the council, its staff and its partners in incredibly difficult times for the district.

Following the Peer Review it has been recommended that the council seek the advice of the LGA 'particularly in respect of the most extreme behaviours' and that there should be compulsory training for members on equalities.

### **1.2.8 Publicity**

Members of the Ethics Committee will be familiar with the Code of Recommended Practice on Local Authority Publicity, which came into force on 31<sup>st</sup> March 2011. The Secretary of State for Communities took steps under the newly enacted Local Audit and Accountability Act 2014 by serving Notices of Intention to serve directions under section 4A of the Local Government Act 1986 on 5 London based Councils. The Councils (Royal Borough of Greenwich, Hackney Council, Tower Hamlets Council, Newham Council and Waltham Forest Council) had allegedly not complied with the Code which requires publicity to be in compliance with the following 7 principles that publicity must be :-

- be lawful
- be cost effective
- be objective
- be even-handed
- be appropriate
- have regard to equality and diversity
- issued with care during periods of heightened sensitivity.

It is not clear why the Councils are alleged to have breached the Code. However, information on one council's website suggests that it may be because the councils were seen as publishing their in-house newsletters/magazines more frequently than the four times a year recommended in the Code of Recommended Practice. The notices (dated 17<sup>th</sup> April 2014) required a response by written representations within 14 days, after which the Secretary could issue a Direction, which if not complied with, could result in proceedings to require compliance by Court order, enforced by contempt of Court proceedings. At the time of writing, the outcome of this matter is not yet known. This will be reported to a future meeting of the Committee.

### **1.3 The local picture**

1.3.1 At the meeting on the 20<sup>th</sup> February, the Ethics Committee also requested that the Monitoring Officer report regularly on any complaints received relating to Members of Coventry City Council.

1.3.2 The Monitoring Officer has dealt with three complaints under the Council's Complaints Protocol, since the date of the last Committee meeting:

- (a) a written complaint which was found to relate to a service complaint rather than against a member. It has been dealt with under Stage 1 of the Complaints Protocol;
- (b) another complaint where the Monitoring Officer is seeking to establish whether the complainant wishes to add anything to the original complaint; and
- (c) an initial contact by telephone awaiting a written complaint.

1.3.3 There have been no complaints about co-opted members or members of Keresley and Allesley Parish Council.

1.3.4 At the last meeting the Committee requested that the Council's website be updated in relation to the Code of Conduct and in particular how to make a complaint against Members. This work has now been done and the approved Complaints Form and Complaints Protocol have been uploaded onto the Council's website. They can be found under the following link:  
[http://www.coventry.gov.uk/info/354/council\\_meetings/776/standards\\_committee](http://www.coventry.gov.uk/info/354/council_meetings/776/standards_committee)

## **2. Options considered and recommended proposal**

Members of the Committee are asked to:

- (a) Note the cases determined under the new regime nationally and delegate any actions arising from these to the Assistant Director Legal and Democratic Services in consultation with the Chair of the Ethics Committee; and
- (b) Note the local position relating to the operation of the Council's Code of Conduct and to delegate any actions arising from these to the Assistant Director, Legal and Democratic Services in consultation with the Chair of the Ethics Committee.

### **3. Results of consultation undertaken**

- 3.1 There has been no consultation as there is no proposal to implement at this stage which would require a consultation.

### **4. Timetable for implementing this decision**

- 4.1 Not relevant

### **5. Comments from Executive Director, Resources**

#### **5.1 Financial implications**

There are no specific financial implications arising from the recommendations within this report.

#### **5.2 Legal implications**

There are no specific legal implications arising from this report. The issues referred to in this report will assist the Council in complying with its obligations under section 27 of the Localism Act 2011.

### **6 Other implications**

None

#### **6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?**

Not applicable.

#### **6.2 How is risk being managed?**

There is no direct risk to the organisation as a result of the contents of this report.

#### **6.3 What is the impact on the organisation?**

No direct impact at this stage

#### **6.4 Equalities / EIA**

There are no public sector equality duties which are of relevance at this stage.

#### **6.5 Implications for (or impact on) the environment**

None

#### **6.6 Implications for partner organisations?**

None at this stage



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Legal: Christine Forde	Assistant Director Legal and Democratic Services	Resources	18/08/14	19/08/14
Director: Christine Forde for Chris West		Resources	18/08/14	19/08/14
Members: Councillor Hetherington	Chair, Ethics Committee	Elected Member	20/08/14	

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[www.coventry.gov.uk/councilmeetings](http://www.coventry.gov.uk/councilmeetings)

**STOCKTON ON TEES BOROUGH COUNCIL: STANDARDS PANEL**

**SHORT WRITTEN DECISION:**

**1. SUMMARY OF ALLEGATION**

That Councillor Mark Chatburn (“the Councillor”) disclosed legally privileged information, namely Counsel’s Opinion, given in confidence to Members of Stockton on Tees Borough Council’s (“the Council”) Planning Committee in connection with an application for planning permission for residential development (13/2184/OUT) in relation to a site at Urlay Nook Road, Eaglescliffe, Stockton on Tees.

**2. RELEVANT SECTION OR SECTIONS OF CODE OF CONDUCT**

That as a result there was a breach of paragraph 6 of the Council’s Code of Conduct for Members.

**3. SUMMARY FINDINGS OF FACT**

- (i) The Councillor was sent a legally privileged advice note prepared by Counsel and this was provided to him in confidence under cover of a letter dated 5 November 2013. The letter included specific advice that the legal advice was exempt information and “must not be shared with anyone who is not also a Member of the Planning Committee as this would be a breach of the Members’ Code of Conduct and may further prejudice the Council’s position at the forthcoming appeal”.
- (ii) The Councillor did not seek advice from any Council Officer as to whether the publication of the privileged legal advice was appropriate, whether it may be in breach of the Code or whether it may prejudice the Council’s position in relation to the current planning appeal.
- (iii) The Councillor did not obtain written authority from the Council to disclose the information by the publishing of the privileged legal advice.
- (iv) On 9 November 2013 the Councillor published a blog posting entitled “How Stockton Council is trying to manipulate its own Planning Committee” which included an un-redacted copy of the privileged legal advice from Counsel which had been provided to the Councillor in confidence as a Member of the Planning Committee.
- (v) On 9 November 2013 the Councillor posted a link to his published blog post and therefore to the privileged legal advice via his Twitter account.
- (vi) The Councillor was acting in his capacity as an elected Member when publishing information on his blog and his Twitter account.

**4. SUMMARY FINDINGS AS TO WHETHER THE MEMBER FAILED TO FOLLOW THE CODE**

That the Councillor knowingly disclosed privileged legal advice provided to him in confidence, and which was marked as exempt information, and that the publishing of this information constituted a breach of paragraph 6 of the Council’s Code of Conduct for Members.

## 5. SANCTIONS APPLIED (IF ANY)

The Standards Panel:-

- (i) agreed that the allegation should be considered in public and that there were no justifiable reasons why it should be considered (either partly or wholly) in private.
- (ii) noted that the Councillor was aware of the Panel's meeting, that the meeting had been rearranged to a date he could attend, but that he had not attended.
- (iii) agreed to proceed to consider the allegation in the Councillor's absence.
- (iv) having considered the report of the Investigating Officer, the Investigating Officer's submissions, and having sought and considered the Independent Person's views, determined that the Councillor knowingly disclosed legally privileged advice that had been provided to him in confidence, and which was marked as exempt information under paragraph 5 of Schedule 12A of the Local Government Act 1972; that the publishing of this information in the public domain by placing a copy of the privileged legal advice on the Councillor's blog, and by linking that blog to the Councillor's Twitter account, did not fall within any of the exemptions specified in paragraph 6(a)-(d) of the Council's Code of Conduct for Members, and that it therefore constituted a breach of paragraph 6 of the Code.
- (v) noted the Councillor's unwillingness or refusal to accept responsibility for the breach of the Code, and his unwillingness or refusal to agree to abide by the Code in the future, in similar or the same circumstances.
- (vi) noted that the breach of the Code was deliberate and blatant and that the disclosure was of not just confidential or exempt information, but legally privileged information; and that the breach was aggravated by its likely impact in relation to the planning and appeal process.
- (vii) noted that the Councillor had shown no remorse, but rather to the contrary had indicated that he would do it again without hesitation, and that he had demonstrated scant regard for the pre-hearing and hearing process.
- (viii) considered that the Councillor's actions represented unacceptable behaviour for a Councillor.
- (ix) agreed that a notice, signed by the Chair of the Panel, and summarising the Panel's decision should be sent to the Councillor as soon as reasonably practicable and that a copy of the notice should thereafter be published in a prominent place at the Council's Municipal Buildings, and on the Council's website.
- (x) agreed that details of the Panel's decision should be reported to a full Council meeting and to a meeting of the Planning Committee.
- (xi) determined that the Councillor should be asked to provide written reassurance within two weeks of receiving the written notice of the Panel's decision, that he would not repeat the failure to comply with the Council's Code of Conduct in the same or similar circumstances, and that in the absence of such written reassurance the Councillor should not be provided by, or on behalf of the Council with any exempt, confidential, or legally privileged council information for the remainder of the Councillor's current term of office.
- (xii) agreed that the Councillor should be provided with appropriate advice and guidance regarding paragraph 6 of the Code of Conduct, including a copy of the Council's Confidential Information Protocol.

**EAST DEVON DISTRICT COUNCIL STANDARDS COMMITTEE  
DECISION NOTICE**

Complaint Reference: MO-C021

**HEARING FINDINGS**

Date of Hearing	15 May 2014
Subject Member	Councillor Graham Salter, Newton Poppleford and Harpford Parish Councillor
Complainant	Councillor Chris Cole on behalf of Newton Poppleford and Harpford Parish Council
Investigating Officer	Tim Darsley
Membership of Standards Sub Committee	Cllr Graham Godbeer(Chairman) Cllr Susie Bond Cllr Frances Newth  Non-voting Cllr David Mason – Parish/Town Member Tim Swarbrick – Independent Member
Independent Person	John Walpole
Monitoring Officer	Denise Lyon
Legal Advisor to Sub Committee	Henry Gordon Lennox, Principal Solicitor
Democratic Services	Hannah Whitfield, Democratic Services Officer
Summary of complaint	<p>After assessment of the complaint the Monitoring Officer decided that there was sufficient evidence to suggest potential breaches of the Code of Conduct in respect of two of the allegations.</p> <p>These were:</p> <ul style="list-style-type: none"> <li>• After being advised by the EDDC monitoring officers that he has DPI Cllr Salter continued to speak and vote instead claiming he only has a personal interest, under the code of conduct anybody with a personal interest must not try to influence the outcome of the matter under discussion, voting is the ultimate attempt to influence. (Relevant paragraph of the Code: Declaration of interests and participation at meetings, - 8.1-3 Personal interests)</li> <li>• An overall failure to act as a member of the Parish Council.</li> </ul> <p>(Relevant paragraphs of the Code: General obligations - 4(a) You must treat others with courtesy and respect and 5(c) You must not bully any person)</p>
Any declarations of interest	None
Hearing in public/availability of relevant documents for public inspection	The Hearing was held in public and agenda papers were made available
Standards Sub Committee decision on whether or not there has been a failure to comply with the Code	The Sub Committee reached a majority decision after carefully considering the relevant material evidence including Councillor Salter's written comments and all the representations presented. In respect of findings of fact, the Sub Committee agreed with the list of undisputed facts in the report of the Investigating Officer.

<p>of Conduct and reasons for their decision</p>	<p>Members of the Sub Committee also considered the disputed facts in detail, noting the Investigating Officer's reasoning as set out in Paragraphs 6.1-12.</p> <p>The Sub Committee came to the following conclusions :</p> <ul style="list-style-type: none"> <li>• Councillor Salter had a personal interest in the matter of the development of land at King Alfred Way by virtue of Paragraph 8.2 of the Code of Conduct. This states that a councillor will also have a personal interest 'where a reasonable person with knowledge of the relevant facts would regard the interest as greater than would affect the majority of residents or inhabitants in the affected area such that it is likely to prejudice your judgement of the public interest'. Councillor Salter declared a personal interest when this was considered and spoke and voted when the planning application was considered on 13 May and 24 June 2013.</li> <li>• Having a personal interest does not necessarily exclude a member from speaking on a matter and voting on it providing that this does not conflict with the principles of the Code of Conduct (1.3 (a), 1.3(f) and 1.7 (set out in full on Page 18 of the Investigating Officer's report).</li> <li>• Paragraph 8.2 of the Code provides a final test of the restrictions on a member when they have an interest - 'where you have any interest in any business of the Council and you attend any meeting at which that business is to be considered, you must not seek to influence improperly any decision about that business'. Seeking to influence would be improper where one or more of the general principles was not adhered to.</li> <li>• The proposed development of up to 40 houses on land at King Alfred Way would have a greater effect on Councillor Salter than on the majority of residents of Newton Poppleford and would have a significant impact on the outlook and amenity of his property. However the Sub Committee did not accept that the development would necessarily impact on his enjoyment of his property.</li> <li>• Although the Sub Committee agreed that in such circumstances it may have been very difficult for Councillor Salter to act solely in the public interest they disagreed with the Investigating Officer that it was inevitable that he was also conscious of and influenced by his own interest. The Sub Committee do find that he acted solely in the public interest.</li> <li>• Notwithstanding that finding the Sub Committee did find that it was not enough to avoid actual impropriety but in this case there could be a suspicion or appearance of improper conduct and he did not avoid the suspicion or appearance of improper conduct.</li> <li>• Accordingly the Sub Committee found that Councillor Salter did have a conflict and did not take steps to resolve this conflict in such a way to protect the public interest.</li> <li>• In failing to do so, Councillor Salter did seek to influence improperly and therefore failed to follow Paragraph 8.2d of the Code.</li> </ul>
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	<p>The Sub Committee conclude that Councillor Salter had breached the Code of Conduct in one respect namely that:</p> <p><b>At the Newton Poppleford Parish Council meetings on 13 May and 24 June 2013, Councillor Salter had a personal interest in the planning applications on land at King Alfred Way and, by speaking and voting, he sought to influence improperly the decisions on them. He therefore failed to follow paragraph 8.2(d) of the Code of Conduct.</b></p>
<p>Any mitigating circumstances taken into account</p>	<p>No relevant mitigating circumstances were given.</p>
<p>Sanctions imposed</p>	<p>The Sub Committee heard and considered representations from the Investigating Officer and Monitoring Officer on whether a sanction should be recommended and if so, what form it should take. Councillor Salter had also been asked for any mitigating circumstances to be taken into account.</p> <p>The Sub Committee considered all the representations and recommends that :</p> <ul style="list-style-type: none"> <li>• EDDC publish its findings on its website in respect of the councillor's conduct. (EDDC will anyway publish the findings on its own website as a matter of procedure)</li> <li>• Report its findings to Newton Poppleford Parish Council for information (This is done as a matter of procedure)</li> </ul> <p>The Sub Committee did not feel it was appropriate to impose any sanctions specifically in respect of Councillor Salter, however it wished to make the following recommendation to the Parish Council:</p> <p>That training be arranged for all Newton Poppleford Parish Councillors on governance issues including Code of Conduct generally and specifically in relation to planning issues.</p> <p>The Sub Committee also discussed referring the Paul Hoey article on interests to EDDC's Standards Committee for its consideration. The Sub Committee recommended this action and the possibility of wider discussion of the article with other councils in order to seek greater clarity and guidance on this matter.</p>