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30<sup>th</sup> November 2015

**Name of Cabinet Member:**

N/A- Ethics Committee

**Director Approving Submission of the report:**

Executive Director of Resources

**Ward(s) affected:**

None

**Title:** Hearing into Complaint under Code of Conduct

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**Is this a key decision?**

No

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**Executive Summary:**

This report sets out brief details of a complaint made by Mishcon de Reya, solicitors on behalf of Arvo Master Funding, SISU Capital Limited, Sky Blue Sports and Leisure Limited, Otium Entertainment Group Limited (trading as Coventry City Football Club), Ms Joy Seppala and Ms Laura Deering (“the Complainants”). The complaint is against Cllr Ann Lucas and Cllr John Mutton (the “Subject Members”) and relates to their roles as Leader of the City Council.

The Complainants allege that Cllr Lucas and Cllr Mutton breached the Council’s Code of Conduct for Elected and Co-opted Members in the following ways:

- (a) Councillor Mutton’s conduct in meetings with Ms Seppala and Ms Deering was unacceptable.
- (b) There was a failure by Cllr Mutton to declare relevant interests and a failure by both councillors to make decisions in an objective and unbiased way.
- (c) Both Cllr Lucas and Cllr Mutton are alleged to have made public comments which were not appropriate for elected members to make and which were defamatory of, and prejudicial to some or all of the Complainants; and
- (d) Cllr Lucas and Cllr Mutton are alleged to have instigated and participated in a public smear campaign against the Complainants through the media.

An investigation into these complaints was carried out by Simon Goacher, a partner in Weightmans LLP. Mr Goacher concluded that there had been no failure to comply with the Council's Code of Conduct by Cllr Lucas or by Cllr Mutton except for a technical failure by Cllr Mutton arising from his failure to register his interest as a trustee of the Alan Higgs Centre Trust between July 2012 and June 2015.

The Complainants do not agree with the Investigator's conclusions and have requested that the complaint be referred to a hearing of the Committee. The Committee is therefore required now to hold a hearing to consider the complaint and reach a decision on whether the Subject Members have breached the Code of Conduct. In the event that a breach or breaches are found to have occurred, the Committee is asked to consider what sanctions, if any, should be applied.

### **Recommendations:**

The Committee is requested to:

- (1) Determine, as a preliminary point, whether or not the Complaint has been fully and properly investigated and whether or not the Report can be relied upon;
- (2) In the event that the Committee decides that it can rely upon the fairness and completeness of the investigation and Report, determine, as a preliminary point, whether or not the additional documents referred to in paragraphs 4.3 to 4.5 should be before the Committee for consideration;
- (3) Subject to the decisions made by the Committee in recommendations (1) and (2) above, hear the complaint against the Subject Members and determine whether either or both have breached the Code of Conduct;
- (4) if the Committee considers that there has been a breach or breaches of the Code of Conduct, determine what sanction or sanctions, if any, should be applied; and
- (5) authorise the Acting Monitoring Officer, in consultation with the Chair of Ethics Committee, to publish the Full Decision on the Council's website at the same time that copies are made available to the parties to the hearing.

### **List of Appendices included:**

**Appendix 1:** Code of Conduct for Elected and Co-opted Members

**Appendix 2:** Complaints Protocol

**Appendix 3:** Complaint dated 12<sup>th</sup> May 2015 and enclosures

**Appendix 4:** Report of Investigating Officer

**Appendix 5:** Documents referred to in Investigating Officer's Report

**Appendix 6:** Written opinion of the Independent Person

**Appendix 7:** Response of Complainant to Investigating Officer's Report

**Appendix 8:** Chronology of main events referred to in the Complaint

**Appendix 9: Hearing Procedure**

**Other useful background papers:**

None

**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: Hearing into Complaint under Code of Conduct**

**1. Context (or background)**

- 1.1 The Council adopted the Code of Conduct for Elected and Co-opted Members (“the Code”) at its meeting on 3<sup>rd</sup> July 2012. A copy of the Code is attached to this report at **Appendix 1**. In addition the Ethics Committee on 30<sup>th</sup> August 2012 approved a Complaints Protocol for use when dealing with Code of Conduct complaints. This is attached at **Appendix 2**.
- 1.2 On 12<sup>th</sup> May 2015, Mishcon de Reya, solicitors, submitted a written complaint to the Monitoring Officer on behalf of their clients: Arvo Master Funding; SISU Capital Limited, Sky Blue Sports and Leisure Limited; Otium Entertainment Group Limited (trading as Coventry City Football Club); Ms Joy Seppala and Ms Laura Deering (“the Complainants”).
- 1.3 The complaint is against Councillors Ann Lucas and Councillor John Mutton (“the Subject Members”) and relates to their respective roles as Leader of the City Council. The complaint alleged that the Subject Members had breached the Code in the following ways:
  - (a) Councillor Mutton’s conduct in meetings with Ms Seppala and Ms Deering was unacceptable.
  - (b) There was a failure by Cllr Mutton to declare relevant interests and a failure by both councillors to make decisions in an objective and unbiased way.
  - (c) Both Cllr Lucas and Cllr Mutton are alleged to have made public comments which were not appropriate for elected members to make and which were defamatory of, and prejudicial to some or all of the Complainants; and
  - (d) Cllr Lucas and Cllr Mutton are alleged to have instigated and participated in a public smear campaign against the Complainants through the media.

**Full details of the Complainant’s complaint are set out in Appendix 3.**

**2. Investigation into the Complaint**

- 2.1 In the absence of the Monitoring Officer, on 18<sup>th</sup> May the Deputy Monitoring Officer instructed Weightmans LLP to conduct an independent investigation into the complaint. The Complainants were informed of this through their solicitors on 21<sup>st</sup> May. Simon Goacher, a partner at Weightmans (“the Investigating Officer”) was appointed to conduct the investigation.
- 2.2 The Investigating Officer conducted interviews with a number of witnesses on the following dates:

<b>Date</b>	<b>Name</b>	<b>Position</b>
12 <sup>th</sup> June 2015	Joy Seppala Laura Deering accompanied by Fiona Laurence and Ramona Mehta,	Chief Executive, SISU Capital Ltd Investment Manager. SISU Capital Ltd

	Mishcon de Reya.	
15 <sup>th</sup> June 2015	Cllr John Mutton	Former Leader of CCC
15 <sup>th</sup> June 2015	Cllr Ann Lucas	Leader of CCC
3 <sup>rd</sup> July 2015	Cllr George Duggins	Former Cabinet Member
3 <sup>rd</sup> July 2015	Lisa Commane	Assistant Director, ICT Transformation and Customer Services
3 <sup>rd</sup> July 2015	Chris West	Executive Director of Resources
7 <sup>th</sup> July 2015	Fran Collingham	Head of Communications

2.2 The Investigating Officer issued his final report to all parties on 5<sup>th</sup> August 2015. He concluded that there had not been any failure to comply with the Council's Code of Conduct by Councillor Lucas or by Councillor Mutton save for a technical failure on the part of Councillor Mutton arising from his failure to register his interest, under paragraph 5.1b of the Code, as a trustee of the Alan Higgs Centre Trust between July 2012 and June 2015.

**The full Report is attached at Appendix 4. At Appendix 5 are the documents referred to in the Report.**

### **3. Response to the Investigating Officer's Report**

3.1 Under the Council's Complaints Protocol, all parties have an opportunity to consider the Report and make a formal Response to the Report if they so wish. In this case, the Subject Members indicated that they agreed with the findings of the Report and did not wish to make a formal response.

3.2 The Council's Independent Person, Mr Ken Sloan, was provided with a copy of the Report and was asked to give his views on it. **His written opinion is attached at Appendix 6.**

3.3 The Complainants indicated that they did not agree with the Investigating Officer's Report. They submitted a full Response to the Report on 16th October.

**The Complainants' Response is set out in Appendix 7.**

### **4. Preliminary Matters to be Dealt with by the Committee**

#### *Adequacy of Investigating Officer's Report*

4.1 The Complainants in their Response argue that the Report by the Investigating Officer is inadequate in that they

*“ do not accept that the Complaint has been fully or properly investigated, and think it is something of a ‘whitewash’. Accordingly the Complainants do not accept the findings in the Report. The Complainants urge the Ethics Committee to consider the Complaint and the notes of the interviews with Ms Seppala and Ms Deering*

*without placing reliance on the Report, The Report cannot be relied upon because it does not reflect a full and fair investigation. The Report's conclusions are therefore unsound." (Paragraph 7 of Appendix 7 to this report)*

**As the adequacy or otherwise of the investigation and the Report of the Investigating Officer forms a significant part of the Complainants' Response, the Committee will be asked to consider, as a preliminary matter, whether the Report as it stands is fit for purpose, or whether it is flawed. Both the Complainants and the Investigating Officer will be invited to address these points at the start of the hearing. The Independent Person will also be invited for his views before the Committee makes its decision on the preliminary issues.**

- 4.2 Once the Committee has considered any representations on this point, it will be asked to determine either:
- that the Complaint has been fully and properly investigated and that the Report is not flawed as stated by the Complainant; or
  - that the Complaint has not been fully or properly investigated and the Report is flawed as stated.

If the Committee determines that the investigation and/or report is flawed, then it will need to decide how to proceed. The Complainants have suggested that the Committee should rely upon the Complaint itself and the notes of the interview with Ms Seppala and Ms Deering. The Committee should note that this approach is **not** recommended as it affords the Subject Members no opportunity to respond to the points made by the Complainants.

It is recommended that if the Committee finds that the investigation and/or the Report are flawed, it should either:

- request the Investigating Officer to make further inquiries and produce a revised Report in the light of those enquiries; or
- give delegated authority to the Acting Monitoring Officer to appoint a new Investigating Officer to conduct a fresh investigation.

#### *Submission of Additional Documents*

- 4.3 As part of their formal Response to the Report, the Complainants submitted additional documents which did not form part of their original complaint, and had not been considered as part of the investigation. More documents were submitted at a later date. In their Response the Complainants argue that it was incumbent upon the Investigating Officer to seek out relevant documents.
- 4.4 Under paragraph 3(3) of Appendix 2 to the Complaints Protocol (**attached at Appendix 2 to this report**), any late documentation will only be considered in exceptional circumstances as determined appropriate by the Chair of the Committee or the Ethics Committee as appropriate in consultation with the Monitoring Officer and/or Independent Person as appropriate.
- 4.5 The additional documents have not been provided with the papers for this hearing as it is for the Committee to decide whether they should be admitted. The Committee is recommended that:
- (a) if it decides the investigation and Report are not flawed (see paragraph 4.2 above) then it should not allow the additional documents to be considered at the hearing. This is because it will be determining the Complaint on the information and facts considered by the Investigating Officer.

- (b) if it has decided that the investigation and/or report are flawed, the additional documents will either:
- fall to be considered as part of any reconvened or new investigation, if the Committee decides to do this or
  - if the Committee decides to proceed on the basis of the original Complaint and interview notes of the Complainants only, it will need to consider whether to allow the documents to be considered at the hearing.

**The Committee is recommended to determine the preliminary point of whether the additional documents should be considered after hearing representations from the Complainants, the Investigating Officer and the Independent Person.**

## **5. Other Relevant Matters**

- 5.1 Officers have put together a Chronology of events referred to in this Complaint and in the Investigating Officer's Report and the Complainants' Response to the Report. This is intended to assist members of the Committee in putting the matters complained of into context. It does not form part of the case of the Complainants' or the Investigating Officer.

**The Chronology is attached at Appendix 8 to this report.**

- 5.2 **Also attached to the report at Appendix 9 is the Hearing Procedure** that will be followed during the hearing into this complaint. The Chair will have the right to depart from the procedure where he considers it appropriate to do so.

## **6. Options Available to the Committee**

- 6.1 At the end of the hearing, the Committee must consider whether the complaint has been upheld. The Committee may decide, on the information/representations before it that:
- The Subject Member or Members have not failed to comply with the Code of Conduct
  - The Subject Member or Members have failed to comply with the Code of Conduct in whole or in part.
- 6.2 In the event that the Committee finds that the Subject Member or Members have failed to comply with the Code of Conduct, it must consider what sanctions, if any, it should apply. The sanctions available to the Committee are to:
- (i) decide to take no action;
  - (ii) publish its findings in respect of the member's conduct;
  - (iii) send a formal letter of censure to the member;
  - (iv) report its findings to the Council either for information [or to recommend censure of the member];
  - (v) recommend to the member's Group Leader that the member be removed from any or all Committees or Sub-Committees of the Council ( where applicable);
  - (vi) recommend to the Leader of the Council that the member be removed from the Cabinet, or removed from particular portfolio responsibilities (where applicable);
  - (vii) recommend the Monitoring Officer to arrange training for the member.

Any recommendation made under (v) to (vii) above will require the cooperation of all parties.

- 6.3 Where a Subject Member does not accept a sanction which has been imposed upon him/her by the Ethics Committee, the Monitoring Officer will submit a report to full Council which will then consider what action, if any, it should take as a result of the Subject Member's failure.

## **7. Results of consultation undertaken**

- 7.1 Both the Complainants and the Subject Members have been consulted at each stage of these proceedings.

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

- 8.1 Any decisions of the Committee will be implemented within an appropriate time frame.

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

### **9.1 Financial implications**

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

### **9.2 Legal implications**

The Council is required under Section 28 of the Localism Act 2011 to adopt a suitable Code of Conduct and to have in place arrangements under which allegations of failure to comply with the Code may be investigated and decisions on allegations can be made. The hearing into this complaint meets this requirement and assists the Council in promoting and maintaining high standards of ethical behaviour as is required under section 27 of the Act.

## **10. Other implications**

### **10.1 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.

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

Failure to consider and deal appropriately with complaints about councillors' behaviour could lead to damage to the Council's reputation as well as that of individual councillors. The hearing into this complaint is designed to ensure that the Council discharges its duty to promote and maintain high standards of conduct.



### 10.3 What is the impact on the organisation?

The hearing is to consider whether the behaviour of the Subject Members breached the Code of Conduct and as such will have no direct impact on the organisation. Nevertheless the conclusions reached by the Committee may be relevant to other councillors.

### 10.4 Equalities / EIA

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

### 10.5 Implications for (or impact on) the environment

None

### 10.6 Implications for partner organisations?

None

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Members: Councillor Clifford	Chair, Ethics Committee	Elected Member	18/11/15	18/11/15

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