

COVENTRY CITY COUNCIL

DECISION NOTICE OF ETHICS COMMITTEE

A **Complaint 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
Ms Laura Deering
("the Complainants")

B **Subject Members:** Councillor Ann Lucas OBE
Councillor John Mutton

C **Introduction**

1. On 30th November 2015 and 29th February 2016, the Ethics Committee of Coventry City Council considered a report of an investigation into the alleged conduct of Cllr Ann Lucas, OBE and Cllr John Mutton, both members of Coventry City Council. A general summary of the complaint is set out below.

D **Complaint summary**

2. The Complainants made a number of allegations about the behaviour of Cllr Lucas and Cllr Mutton. These can be summarised as follows:

2.1 Cllr Mutton's conduct in meetings with Ms Seppala and Ms Deering was unacceptable;

2.2 Cllr Mutton failed to declare relevant interests;

2.3 Cllr Lucas and Cllr Mutton failed to make decisions in an objective and unbiased way;

2.4 Cllr Lucas and Cllr Mutton 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

2.5 Cllr Lucas and Cllr Mutton instigated and participated in a public smear campaign against the Complainants through the media.

- 2.6 The grounds for complaint set out at 2.1 to 2.5 above are taken from paragraph 2 of the Complainants' Response to the Investigating Officer's Report where the alleged breaches of the Code are summarised.
- 2.7 In addition, following the publication of the Investigating Officer's report, the Complainants further alleged that the complaints had not been fully or properly investigated by the Investigating Officer and that it was something of a "whitewash". They did not accept the findings in the report which could not be relied upon because it did not reflect a full and fair investigation. In particular there was:
- (a) A misunderstanding of the basis of the complaint;
 - (b) A failure to conduct the investigation properly;
 - (c) A failure to investigate the complaint fully including a failure to request; that Coventry City Council provide all relevant documents;
 - (d) Insufficient consideration and thought given to the relevant evidence;
 - (e) Introduction of and reliance on irrelevant evidence;
 - (f) A failure to apply the relevant law properly; and
 - (g) Reached incorrect or unsound conclusions.

E Hearing

3. The Ethics Committee consisted of:
- Cllr Joe Clifford (Chair)
 - Cllr Allan Andrews
 - Cllr Linda Bigham
 - Cllr Damian Gannon
 - Cllr John McNicholas
- 3.1 The Independent Person, Mr Ken Sloan, attended the hearing.
- 3.2 Ms Joy Seppala and Ms Laura Deering (the Complainants) attended the hearing and were represented by Ms Fiona Laurence of Mishcon de Reya, Solicitors.
- 3.3 Cllr Lucas and Cllr Mutton attended the hearing and Cllr Mutton was accompanied by Cllr George Duggins.
- 3.4 Mr Simon Goacher of Weightmans, Solicitors, the Investigating Officer (IO), attended the hearing.

F Consultation with Independent Person

4. The Independent Person, Mr Ken Sloan, stated in a letter dated 13th November 2015 that:
- 4.1 *"In completing his report, Mr Goacher has remained focussed on the*

allegations brought forward by the complainants insofar as they relate to the Coventry City Council Code of Conduct as adopted by the Council in July 2012. He states on several occasions that there are matters brought forward by the complainants which go beyond the requirements of the Code of Conduct but relates his conclusions only on matters as they pertain to the allegation of breaches of the Code of Conduct.

4.2 *“The report highlights the documents that have been reviewed and the interviews that have been conducted. It states that all parties have had the opportunity to review the notes of their interviews and confirm that the details contained within the notes are accurate.*

4.3 *“It is not my role to re-examine or investigate the complaint. I am limiting my comments therefore to whether I have concerns on the report or the manner in which the investigation has been conducted. I can confirm that having read the report I have no concerns regarding it, its conclusions or the manner in which it has been conducted.”*

5. At the conclusion of the hearing the Independent Person was again asked for his views. He made the following points:

5.1 At the time the complaint was made, the issue of the timeliness of some of the complaints was raised. He thought it was appropriate to consider these complaints even though the last event complaint of was 2 or 3 years before the complaint was received.

5.2 This was a highly complex case and evidence base and it was a significant task for the Committee to come to a decision. He recommended that the Committee bear in mind at all times the opening statement of the Code which talks about the individual councillor agreeing to comply with the Code when undertaking their duties as a councillor. There was no process in the Code for taking into account the actions or roles of other bodies or of council officers. The Committee should be absolutely clear about the part played by Cllr Lucas and Cllr Mutton individually and their actions.

F Findings

6. After considering the submissions of the parties to the hearing and the views of the Independent Person, the Committee reached the following decision(s):

6.1 ***On the question of whether the investigation and report of the Investigating Officer were flawed:***

The Committee found that the Investigation and report of the Investigating Officer was sufficient for the purposes of establishing whether any breaches of the Code of Conduct occurred.

6.2 ***Whether Cllr Mutton’s conduct in meetings with Ms Seppala and Ms Deering was unacceptable:***

The Committee found that there was insufficient evidence to show that Cllr Mutton’s behaviour was unacceptable and there was no breach of the Code of Conduct.

6.3 ***Whether there was a failure by Cllr Mutton to declare relevant interests:***

The Committee concluded that Cllr Mutton did not fail to declare his interest as it was not one that he needed to declare. There was therefore no breach of the Code of Conduct

6.4 ***Whether there was a failure by both councillors to make decisions in an objective and unbiased way:***

The Committee decided that there was no failure by either councillor to make decisions in an objective or unbiased way. There was therefore no breach of the Code of Conduct.

6.5 ***Whether Cllr Lucas and Cllr Mutton 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:***

The Committee did not consider that the comments made by either councillor amounted to a breach of the Code of Conduct.

6.6 ***Whether Cllr Lucas and Cllr Mutton instigated and participated in a public smear campaign against the Complainants through the media:***

The Committee concluded that there is no evidence that either councillor instigated or participated in a public smear campaign against the complainants. There was therefore no breach of the Code of Conduct.

G Reasons

7. **The Committee’s reasons for reaching its decision are as follows:**

7.1 ***Finding at Paragraph 6.1***

7.1.1 The Complainants have alleged that the investigation and report of the Investigating Officer were flawed. The Committee heard representations on this point from the Complainants and the Investigating Officer.

7.1.2 The Committee is mindful that the local standards regime as set out in the Localism Act 2011 gives councils a certain amount of freedom in the way in which it investigates complaints about councillors’ behaviour but at the

same time the range of sanctions available to them is significantly smaller and weaker than it was under the previous regime. It is intended to be a light touch regime.

- 7.1.3 It is against this backdrop that the Committee has considered whether the investigation and report are sufficient for the purposes of coming to a view on whether there have been any breaches of the Code of Conduct.
- 7.1.4 The Committee has heard the Complainants' arguments that the Investigating Officer should have interviewed other potential witnesses, sought out additional documents and possibly asked additional questions of witnesses who were interviewed. However, it should be remembered that this was the Complainants' complaint and they were afforded every opportunity to put their case, both in writing and in interview. It was for the IO to determine who should be interviewed and the Committee accepts his view that there was no need to interview other witnesses in connection with the complaint. The Committee considers that it was not proportionate to expect the IO to ask the Council for additional documents in order to support the Complainant's case. The Committee also accepts the Investigating Officer's view that any investigation needs to be fair and proportionate bearing in mind the light touch regime that it forms part of.
- 7.1.5 The Committee has taken note of the Independent Person's views on the adequacy or otherwise of the Investigation and Report and in particular his observation that the Report has remained focussed on those aspects of the Complaint which relate to the Code of Conduct and the behaviour of the individual councillors. The Committee can only deal with these matters and has no authority to rule on complaints about decisions made by the Council itself or by officers. At times the Complaint has strayed into trying to ascribe to Cllr Lucas and Cllr Mutton responsibility for the decisions or actions of others. In this respect the Committee agrees that the Investigating Officer was right to confine his investigation and report to matters which could be dealt with under the Code.
- 7.1.6 For these reasons the Committee considers that the Investigation and Report are adequate for the purposes of this hearing and it would not be fair or proportionate to require further investigation.

7.2 ***Finding at Paragraph 6.2***

- 7.2.1 The allegation was that Cllr Mutton's behaviour in meetings with Ms Seppala and Ms Deering was unacceptable. He was said to have been "rude, unprofessional, unnecessarily and inappropriately argumentative, aggressive and appeared to be sexist as well."
- 7.2.2 The Committee has assumed that the allegation is, therefore, that Cllr Mutton breached paragraph 3(j) of the Code of Conduct in that he failed to treat people with respect.
- 7.2.3 These allegations relate to meetings which took place on 1st and 18th May

and 24th July 2012. Ms Seppala and Ms Deering were both present at the meetings in May. Ms Deering was present at the July meeting. Ms Seppala was not physically present but participated via the telephone.

7.2.4 The Committee has not had any evidence produced to it that sets out *why* Cllr Mutton's behaviour was considered to be so unacceptable as to constitute a breach of the Code of Conduct. There is no evidence of what he is said to have said or done to support the allegation, except that he, and Cllr Duggins, had berated both Ms Seppala and Ms Deering for the poor performance of the football club. Cllr Mutton has described this particular incident as a discussion of the "dire" performance of the football club and how things could be turned around. He said that he had not expected Ms Seppala or Ms Deering to apologise for the club's performance as they were not responsible for this.

7.2.5 At the hearing Cllr Mutton accepted that he was robust, but not rude, in these meetings. The Committee has also taken note of the accounts of Chris West and Cllr Duggins who were both present at those meetings and who considered that while the atmosphere of the meetings may have been "grumpy" at times, Cllr Mutton had not been rude. The fact that Ms Seppala asked Cllr Mutton to give her a hug after one of the meetings suggests that the relationship between them was not entirely antagonistic.

7.2.6 The Committee also noted that although Ms Deering took notes of the three meetings at which Cllr Mutton's behaviour was alleged to be unacceptable, those notes do not record any specific incidents. If Cllr Mutton's behaviour was as bad as has been suggested, the Committee feels that some note might have been taken of it. (pages 145 to 153 of the agenda documents)

7.2.7 The Committee has also noted that the Complainants did not complain about the alleged behaviour until nearly three years after the events complained of. While it accepts that the Complainants may not have wanted to make a formal complaint while negotiations were still continuing, the delay in so doing has contributed to a lack of evidence on this aspect of the Complaint.

7.2.8 The Committee has therefore concluded that there is insufficient evidence to support the allegation that Cllr Mutton's behaviour was unacceptable.

7.3 ***Finding at Paragraph 6.3***

7.3.1 The allegation is that Cllr Mutton failed to declare in his register of interests that he was a trustee of the Alan Higgs Centre Trust. The Investigating Officer had concluded that although this was not a disclosable pecuniary interest, it fell to be disclosed under Paragraph 5.1(b) of the Code of Conduct.

7.3.2 Paragraph 5.1(b) requires councillors to register details of their membership of any organisation or body whose rules or requirements of

membership could be regarded as suggesting a degree of loyalty to that organisation or body. This could arise by reason of an organisation having an obligation of secrecy about its rules, its membership or conduct and/or a commitment of allegiance or support to that organisation or body. Such organisations or bodies may or may not be charitable concerns and they may also have a local, regional, national or international aspect.

7.3.3 The Committee accepts Mr Goacher's finding that Cllr Mutton, by virtue of being a trustee of the Alan Higgs Centre Trust, did not have a disclosable pecuniary interest as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012/1464.

7.3.4 However, the Committee considered that the wording of paragraph 5.1(b) gives a clear indication that it is intended to apply only to membership of organisations or bodies whose rules or requirements demand a degree of loyalty from its members which is greater than one would normally expect from other organisations or bodies. This view is supported by the example given in the Code to a body that expects its members to keep its rules secret. While as a trustee Cllr Mutton has a number of legal obligations to the Trust, he is not bound to it in the way contemplated by paragraph 5.1(b).

7.3.5 For these reasons the Committee considers that Cllr Mutton did not breach the Code of Conduct as he was under no obligation to register his position as trustee as an interest.

7.4 ***Finding at Paragraph 6.4***

7.4.1 The allegation is that Cllr Lucas and Cllr Mutton failed to make decisions in an objective and unbiased way.

7.4.2 The Committee considers that this aspect of the Complainant's case was not touched upon to any great degree either in the Complainant's original complaint, their response to the IO's report or during the hearing. The Complainant has not indicated which *specific* decisions the two Councillors are alleged to have made in a subjective or biased way and why. There was reference to the decision to make the loan to ACL and the one to sell to Wasps but the Committee recognises that these were decisions of the Council, and were not made by either councillor alone. At best it has been suggested that the fact that both councillors were fans of the football club rendered them incapable of making unbiased and objective decisions. In addition it is suggested that Cllr Lucas and Cllr Mutton's participation in the decision of full Council was biased and lacked objectivity.

7.4.3 The Committee is clear that the Code of Conduct is intended to deal with the behaviour of individual councillors and cannot be used as a means to attack decisions made by the Council itself or any of its decision making bodies, such as Cabinet, committees or individual Cabinet Members. As the IO states in his report at paragraph 82 of his report (page 80 of the

agenda documents):

“The Code is about Councillors’ Conduct and not the quality of their decision making. There may be circumstances where decision making could be so unsound that it becomes a breach of the Code, for example, where a decision is motivated purely by personal or political factors. However, generally the mere fact that a decision is not one which the complainant believes the council should have made is never grounds for a complaint for the Code. Even where a decision is found on JR to have been unlawful it will be rare that this will amount to a failure to comply with the Code, so long as the decision is honestly made.”

7.4.4 The Committee agrees with the IO’s conclusion at paragraph 83 of his report that *“the Councillors, including Councillors Lucas and Mutton, made the decision which they did because they honestly believed, on professional advice, that it was in the best interests of the Council and the council tax payers.”* (Page 80 of the agenda documents.)

7.4.5 The Committee considers that the IO’s conclusions (at paragraph 90 of his report—page 82 of the agenda documents) that the councillors’ association with the football club did not amount to an interest under the Code of Conduct is correct. No evidence has been produced by the Complainants to show that any interest needed to be declared.

7.4.6 The Committee has therefore decided that there are no grounds for concluding that Cllr Lucas or Cllr Mutton failed to comply with the Code in reaching their decision on the Council’s actions in relation to ACL.

7.5 ***Finding at Paragraph 6.5***

7.5.1 The allegation is that Cllr Lucas and Cllr Mutton 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.

7.5.2 The Committee has taken note of the table of comments produced by the Complainants as part of their original complaint. (Pages 48 to 53 of the agenda documents) It has, however, only considered those comments which are ascribed to either Cllr Mutton or Cllr Lucas and has not considered the comments which are ascribed in the table to third parties who are not the subject of this hearing. This is because the Committee’s role is to consider whether Cllr Lucas and/or Cllr Mutton have breached the Code of Conduct by their actions, behaviour or words. It is not part of their remit to consider what others may have said.

7.5.3 The Committee accepts that the comments ascribed to Cllr Mutton and Cllr Lucas in table were in fact made by them with the following exceptions:

- The Committee accepts Cllr Lucas’ explanation that the comment that Coventry City Council should only “deal with SISU when hell freezes over” was one that had been put to her by fans of the football club. It was not an expression of her own views and she

- was merely reporting what had been said to her; and
- The Committee accepts that the question “Could SISU sell to another shyster” was one raised by another councillor at the Labour Group meeting and not made by Cllr Lucas. It also accepts Cllr Lucas’ assertion that this was not an expression she would have used.

7.5.4 With regard to Cllr Lucas, apart from the two comments referred to in paragraph 7.5.3 above, four other comments are cited in the table produced by the Complainants, namely:

- A press statement dated 12th June 2013
- An article in the Guardian dated 2nd December 2013
- An article in the Coventry Telegraph dated 27th November 2014
- An article in the Coventry Telegraph dated 15th January 2015

7.5.5 The Committee accepts Cllr Lucas’ assertion that all of these statements were made following advice and input from the Council’s press office and legal officers (paragraph 63 at page 75 of the agenda documents). It can find no evidence to suggest that any of these statements were inappropriate as they all relate to the Council’s view of the situation at the time. They reflect the Council’s policy position and were statements that Cllr Lucas was entitled to make in her position as Leader of the Council. The Committee found no evidence to support the claim that these comments prejudiced the Complainants. While the Committee does not think that is for it to rule on whether any of the statements were defamatory, it does not consider that any of them could be said to be disrespectful.

7.5.6 With regard to Cllr Mutton, there are a number of comments referred to in the table produced by the Complainants namely:

- An article in the Independent dated 21st April 2012
- Articles in the Coventry Telegraph dated 23rd April 2012, 23rd May 2012, 26th May 2012, 30th August 2012, 16th and 17th January 2013,
- An article in the Coventry Observer dated 26th April 2012
- Articles in the Guardian dated 27th April 2012, 12th December 2012
- Radio interview on 13th March 2013

7.5.7 The Committee has considered these comments very carefully and concluded that there is no evidence that the comments reported on 21st, 26th, 27th April 2012, 23rd and 26th May 2012, 30th August 2012, 12th December 2012 and 16th January 2013 were inappropriate as they reflected the Council’s view of the situation at the time. While there is a certain degree of robustness in the way that Cllr Mutton expressed himself on occasions, he was entitled to give his view as Leader of the Council. The Committee found no evidence to support the claim that these comments prejudiced the complainants neither did it feel that these statements amounted to a lack of respect.

7.5.8 With regard to Cllr Mutton's statement on 23rd April, the Committee accepts that when Cllr Mutton joined in with the rest of the crowd chanting "SISU out", he was not acting in his capacity as a councillor and so the Code did not apply. However when he repeated this to the press, he was acting as Leader of the Council and so his remark falls to be considered by the Committee.

7.5.9 The Committee acknowledges that this statement (on 23rd April 2012) and that made in the radio interview on 13th March 2103 were in response to questions and were not pre-prepared statements. These, together with the statement made on 17th January 2013 are couched in forthright terms. In the Committee's view they indicate a degree of frustration with the situation and with what had been difficult negotiations over a period of time. The situation was one that had a great deal of public interest and attention in the media. Cllr Mutton's comments must be judged in this context.

7.5.10 The Committee accepts the IO's conclusions at paragraphs 93 to 104 of his report (pages 83 to 85 of the agenda documents) that although these comments were **close** to being disrespectful, they did not in fact amount to a lack of respect. The comments were a robust expression of Cllr Mutton's honestly held belief about the way in which SISU was operating the football club at the time. Neither were they inappropriate in that;

"It is important that elected politicians are able to comment on issues of local concern. This is particularly important when the politician is the Leader of the Council and it relates to an issue of significant public interest.... The right to freedom of expression is not without limits but members must be able to express their opinions in a forthright manner without fear that they will be the subject of a complaint under the Code". [Paragraph 103 at page 85].

In addition, the Complainants provided no evidence to support the claim that these comments were prejudicial to them.

7.5.11 The Committee accepts that the Complainants did not agree with what councillors said but that does not mean that either councillor failed to comply with the Code of Conduct. Under the circumstances the Committee found that none of the comments made by either councillor amounted to a breach of the Code.

7.6 ***Finding at Paragraph 6.6***

7.6.1 The final allegation is that Cllr Lucas and Cllr Mutton instigated and participated in a public smear campaign against the Complainants through the media.

7.6.2 The Complainants have relied to a large extent on extracts from a series of emails, mostly from Weber Shandwick (a PR company) to support their claim that there was a public smear campaign against the Complainants,

and Ms Seppala in particular. These can be found at pages 99 to 127 of the agenda documents. The emails are heavily redacted and it is therefore difficult to read these in their proper context.

- 7.6.3 In addition the Complainants have argued that PowerPoint slides at weekly briefing meetings at Coventry City Council and minutes of an ACL directors' meeting (Documents 4, 5 and 6 in the 28 October documents) show that there was a media campaign against the Complainants and that Cllr Lucas and Cllr Mutton must have instigated and been involved with it.
- 7.6.4 The Committee considers that there is no evidence that Weber Shandwick was ever instructed by the Council to deal with its PR in connection with the Ricoh Arena. The Committee accepts the evidence of Fran Collingham, the Council's Head of Communications that the Council does not use PR Consultants and that although she was kept updated about what Weber Shandwick were doing and had talked to and met them a couple of times, no joint media releases have been made and no joint publicity had been undertaken. (Paragraph 52 on page 72 of the agenda documents). The Complainants have produced no evidence to suggest that the Council (as distinct from ACL) was working with Weber Shandwick in a media campaign to publicly smear the Complainants.
- 7.6.5 Weber Shandwick were instructed by ACL and the Council's Chief Executive and Executive Director of Resources were both members of ACL's Board. The Committee considers that in their dealings with Weber Shandwick these two officers were acting in their capacity as directors and this does not entitle an assumption to be made that therefore Cllr Lucas and Cllr Mutton must have had knowledge of and instigated and participated in a public smear campaign.
- 7.6.6 With regard to the content of the emails from Weber Shandwick, it is not possible to know to whom they were sent and the very heavy redaction makes it difficult to put their content into context. Nevertheless, the Committee has noted the evidence of Chris West that he believed that many of the comments made by Weber Shandwick (and which the Complainants have drawn to the attention of the Committee during the hearing) arose because Weber Shandwick were monitoring a blog called Skyblue Talk for ACL. The comments were, in Mr West's view, a summary of what was being said on Skyblue Talk by fans. Mr West also believed that where emails had been copied in to council email addresses, they would have sent to him and Martin Reeves and possibly to Fran Collingham. He was not aware of Cllr Lucas or Cllr Mutton being copied in to these emails. (Paragraph 16, page 214 of the agenda documents) Neither Cllr Lucas nor Cllr Mutton could recall having any dealings with Weber Shandwick.
- 7.6.7 With regard to the PowerPoint slides used at weekly briefings, the Committee rejects the claim that these support the allegation that there was a deliberate strategy of targeting the Complainants and Joy Seppala in particular. The slides give headline points on a number of aspects of

the Ricoh/ACL matter, including media and PR, but give no indication that either the Council (as opposed to ACL)had instructed Weber Shandwick or that Cllr Lucas or Cllr Mutton was working with or routinely being briefed by them. While the Committee accepts that the use of the words “Council/Higgs/ACL clearly winning the media war” may have been unfortunate, they must be seen in the context of the press and media attention being paid to this issue at the time. The Committee believes that it was to be expected that the Council would develop a media strategy for dealing with this issue.

7.6.8 The minutes of the ACL directors’ meeting indicate that ACL had instructed a PR agency and nothing more. In the Committee’s view, it cannot be assumed from these minutes that this meant that Cllr Lucas and Cllr Mutton had instigated and participated in a public smear campaign.

7.6.9 If there had been a public smear campaign through the media as alleged, the Committee thinks that it would be reasonable to see actual examples of such tactics being used in the press. While the Complainants have produced a table of comments, for reasons set out in Section 7.5 the Committee does not accept that these comments were in any way inappropriate or lacking in respect. It follows, therefore that it does not accept that they amounted to a public smear campaign.

7.6.10 For these reasons the Committee finds that neither Cllr Lucas nor Cllr Mutton instigated or participated in a public smear campaign and there was therefore no breach of the Code.

H Sanctions applied

The Committee has found that there was no breach of the Code of Conduct by either Cllr Lucas or Cllr Mutton and so no sanctions fall to be applied.

I Appeal

There is no right of appeal against the Committee’s decision.

J Notification of decision

This decision notice is sent to:

Councillor Ann Lucas OBE
Cllr John Mutton
Mishcon de Reya, Solicitors on behalf of the Complainants

The decision will also be published on the Council’s website.

K Additional help

If you need additional support in relation to this decision notice or future contact with the City Council, please let us know as soon as possible. If you have difficulty reading this notice, we can make reasonable adjustments to assist you, in line with the requirements of the Equality Act 2010. We can also help if English is not your first language.

**Cllr Joseph Clifford
Chair, Ethics Committee**

29th February 2016