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Ethics Committee

15 July 2016

**Name of Cabinet Member:**

N/A - Ethics Committee

**Director Approving Submission of the report:**

Executive Director of 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 any national issues in relation to the ethical behaviour of elected members and the local position in Coventry with regard to Code of Conduct issues.

**Recommendations:**

The Ethics Committee is recommended to:

1. Note the cases determined under the new regime nationally and request that the the Legal Services Manager, Place and Regulatory in consultation with the Chair of the Ethics Committee, shares the case updates with all elected Members;
2. Authorise the Legal Services Manager, Place and Regulatory to draft a Member/Officer Protocol and Monitoring Officer Protocol for consideration by the Committee at a future meeting; and

3. 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 Legal Services Manager, Place and Regulatory in consultation with the Chair of the Ethics Committee.

**List of Appendices included:**

Appendix: Decision Notice in respect of standards hearing held by another authority

**Other useful background papers can be found at the following web addresses:**

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: Code of Conduct update**

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

1.1 The Council's Ethics Committee 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 Cllr B: Wigan Council**

This was an unusual case in that the complaint that Cllr B had breached the Code of Conduct was submitted by the full Council. The complaint was made after the councillor was alleged to have made bullying and abusive remarks to another councillor at a meeting of full Council. At the next Council meeting, another councillor asked the subject member to take back his remarks but he refused and at that point the Council resolved to lodge a complaint under the Code of Conduct.

The case was heard in the subject member's absence and the Sub Committee decided to take the following action:

- (1) The formal Decision Notice is to be published on the Council's website;
- (2) Details of the outcome to be published in the press and also in a newspaper circulating in the councillor's ward;
- (3) That Councillor B submit to the Monitoring Officer an unconditional written apology addressed to the Council members in a form acceptable to the Monitoring Officer
- (4) That should Councillor B be re-elected as a Councillor following the completion of his term of office in May, then for a period of two years from the date of his re-election:
  - All emails Councillor B sends to Members or officers of the Council shall be managed before delivery to the Member or officer. They should only be forwarded on to the relevant Member or officer to respond to if they are respectful and courteous and do not contain abuse, rudeness or ridicule and are not considered to be harassing either in the content of the email or volume of emails he sends to the Member or officer. Members and officers are to respond to emails from Councillor B to his Councillor's Council email address;
  - Having particular regard to the nature and pattern of bullying behaviour consistently shown by Councillor B, any contact by him with Council officers should be restricted to emails, except for urgent matters requiring an immediate response, which may be made by telephone, but only to a named officer or officers supplied to him by the Council, from time to time;

- Councillor B's ability to support Brighter Borough applications for funding be removed.
- (5) Should Councillor B comply with sanction (3) above then the two year length of the sanctions referred to in (4) above shall be reduced to one year.

A copy of the Decision Notice is set out in the Appendix.

### **1.2.3 Independent Member: Wigan Council**

Members of the Committee may recall receiving several reports in recent years about allegations of breaches of the Code of Conduct by an Independent Member of Wigan Council. The Member had a long history of complaints that he had breached the Code of Conduct including allegations that he used his Council provided mobile telephone to call adult chat lines and that he was sexist. A report from the BBC in April 2016 confirmed that the Member had decided not to put himself forward for re-election in May.

### **1.2.4 Possible Review of Sanctions for Councillors**

- 1.2.4.1 The Committee will be aware that the Committee for Standards in Public Life has been concerned for some time about the lack of meaningful sanctions available to councils in dealing with complaints under the Code of Conduct. The Committee has been monitoring the situation in local government since the changes to the standards regime in 2012 and always makes reference to the issue in its annual report.
- 1.2.4.2 Cornwall Council is now lobbying for the reintroduction of meaningful sanctions that can be appropriately applied in certain cases if a member breaches the Code. There are some concerns in Cornwall, after two serious breaches which did not relate to interests, that their Standards Committee is limited as to what sanctions could be imposed. Additionally, failures to declare what would have been in some cases prejudicial interests relating to a family member, not a spouse or partner, now receive as a sanction a censure at best, and cases where parish clerks are bullied by an individual member cannot be fully addressed unless the clerk opts for the employment law route.
- 1.2.4.3 On a slightly different but related point, the Local Government Act 1972 prohibits any person who has been convicted of a criminal offence and received a sentence of imprisonment of 3 months or more from becoming or continuing to

be an elected member. In February 2016, Debbie Abrahams, the MP for Oldham East and Saddleworth, raised two written questions in parliament about whether the Secretary of State for Communities and Local Government would bring forward legislative proposals to ensure that people who are convicted of child sex offences but receive a sentence less than the threshold for disqualification, are barred from serving as an elected member. The response from the Government was that during the passage of the then Cities and Devolution Bill it undertook to review the legislation on the disqualification of local authority members and to consult on proposals for change to bring the legislative rules into line with modern sentencing guidelines. The intention is to launch the consultation as soon as practicable in 2016.

1.2.4.4 The Monitoring Officer will continue to monitor the outcome of both of these initiatives and report any progress to the Committee.

#### 1.2.5 **Governance Issues in Other Councils**

1.2.5.1 At its meeting on 2<sup>nd</sup> July 2015, the Committee considered a report on Rotherham Council in particular considered the governance issues raised by the report. The Committee asked that a review of the Council's whistle-blowing policy be carried out. Officers are working on a draft policy, which will be considered by the Committee at a future meeting.

1.2.5.2 Since then, there have been reports published in connection with two other councils which have also raised concerns about, among other things, governance in those councils. These are:

*(a) Sandwell Council*

An investigation was carried out by external solicitors into allegations relating to, among others, land disposals, cancellation of parking tickets, housing allocations and declarations of interest. The subsequent report runs to over 50 pages in length and deals with many issues of concern but of particular interest to the Committee will be the fact that both councillors and officers were heavily criticised in terms of political interference in day-to-day management of some services including one being discharged by an arm's length organisation, bullying and intimidation and involvement in matters where councillors and officer had interests. Some officers were also criticised for allowing themselves to be bullied and coerced, failing to report concerns and failing to secure adequate reporting of concerns.

*(b) Derby City Council*

In June 2016, a public interest report by external auditors was published into a number of matters of concern at Derby City Council. These included failures of governance in the management of major projects and in relation to member conduct. In particular the report concludes that members were too involved in operational matters in relation to major projects and inappropriate interventions by members in licensing matters. Officers were found not to have ensured that some council actions were legal, allowing decisions to be taken at too low a level or by members who did not have power to do so and blurring of member and officer roles.

1.2.5.3 The Acting Monitoring Officer is undertaking a review of governance matters raised by these two reports to ensure that appropriate checks and balances are in place in Coventry. Many of the actions criticised in the two reports arise from a 'blurring of the lines' between Officers and Members, inappropriate behaviour by members towards Officers and a lack of arrangements in place to deal with such issues. Whilst there are no particular areas of concern in Coventry, the lack of any arrangements to deal with issues if they occurred may result in an erosion of ethical standards.

1.2.5.4 Such arrangements are typically set out in Member/Officer Relations Protocols and a Monitoring Officer Protocol. The Council did have a Member/Officer Relations Protocol but it is no longer in place. Such protocols are considered to be good practice. In 2000 the Secretary of State issued a Ministerial Direction to all local authorities recommended that any Member/Officer Protocol should be included in their Constitution.

1.2.5.5 It is therefore recommended that the Acting Monitoring Officer is requested to draft a Member/Officer Protocol and a Monitoring Officer Protocol for consideration by the Committee at a future meeting.

### **1.3. The local picture**

1.3.1 At its meeting on the 20<sup>th</sup> February 2014, the Ethics Committee 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 received three new complaints, since the date of the last Committee meeting:

(a) one against all councillors but which revealed no breach of the Code and was in reality a complaint about a policy decision of the Council. This was dealt with at Stage One with no further action being taken. The complainant's concerns have been dealt with under the Council's Corporate Complaints Procedure.

(b) a complaint that a councillor used their position to gain an advantage. The stage One investigation concluded that the councillor was not acting in their official capacity and so no further action would be taken at this time.

(c) a complaint that a councillor had given information which they knew to be false both at a meeting of the Council and in response to a fellow councillor. This was dealt with at Stage One with no further action being taken

1.3.3 All complaints are handled in accordance with the agreed Complaints Protocol. No findings have been made by the Local Government Ombudsman in relation members of Coventry City Council. No complaints have been received by the Monitoring Officer in respect of Allesley, Finham or Keresley Parish Councils.

1.3.4 The Committee will be aware that with effect from 1<sup>st</sup> April 2016, a new parish council has been created in Finham. Ten parish councillors were elected to the parish council on 5 May 2016 and held their first meeting on 12<sup>th</sup> May. Officers have been working closely with the ward members for the parish council, the temporary clerk and the residents association in the months to ensure that all necessary processes are in place to enable the parish council to operate.

1.3.5 The Acting Monitoring Officer has offered all three parish councils training for their councillors on their Code of Conduct and the declaration of interests. At the time of writing this report she was liaising with the parish councils to agree dates for training sessions.

1.3.6 The Acting Monitoring Officer has held three training sessions for City Councillors on the Code of Conduct and Declaration of Interests during the week beginning 13 June 2016. Thirty-two councillors attended one of the training sessions and the Acting Monitoring Officer will arrange a mop-up session in the early autumn for members who were unable to attend.

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

Members of the Committee are asked to:

- (a) Note the cases determined under the new regime nationally and request that the Legal Services Manager, Place and Regulatory, in consultation with the Chair of the Ethics Committee bring the case summaries to the attention of all elected Members;
- (b) Authorise the Legal Services Manager, Place and Regulatory to draft a Member/Officer Protocol and Monitoring Officer Protocol for consideration by the Committee at a future meeting; and
- (c) 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 Legal Services Manager, Place and Regulatory, 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 The case summary will be shared with all elected Members as soon as possible and in any event before the next meeting of the Committee.

#### **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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This report is published on the council's website:  
[www.coventry.gov.uk/councilmeetings](http://www.coventry.gov.uk/councilmeetings)

## Appendix

### 1. Councillor B : Wigan Council

This was a hearing to consider whether Councillor B had failed to comply with the Council's Code of Conduct.

The Sub Committee was convened under the Council's 'Arrangements for Dealing with Complaints about the Code of Conduct for Members' in accordance with the Localism Act 2011 for the determination of complaints that a Member may have breached the Council's Code of Conduct.

The Sub Committee was notified that Councillor B had submitted a not fit to work note from his GP. The Sub Committee allowed 30 minutes after the advertised time before commencing the meeting to allow Councillor B time to attend but he did not arrive. The Sub Committee decided to hear the matter in Councillor B's absence, in doing so the Sub Committee took into account the following matters;

- Councillor B had been offered a number of opportunities to engage with the process
- the complaint had been outstanding for a considerable period
- Councillor B had been aware of the date and time set for the hearing for a reasonable time.
- The investigating officer and the witnesses were in attendance and had prepared for the hearing to take place
- The hearing had already been postponed on a previous occasion at Councillor B's request.
- Councillor B had been informed that if he did not attend the reconvened hearing it would proceed in his absence

The complaint was submitted by Full Council. The allegation was that at a Full Council meeting held on 12th November 2014 Councillor B made bullying and abusive comments to Councillor M, namely, "Oh, I forgot it is you Mr M you dickhead". The Sub Committee was informed that at the subsequent Full Council meeting held on 14th January 2015 Councillor H had made a request that Councillor B apologise for the comments he had made at the previous meeting but that he had refused to do so. Full Council therefore resolved to make a formal complaint against Councillor B in relation to his comments.

The Sub Committee had not received notification from Councillor B as to whether he wanted the hearing to be in public despite the numerous opportunities he had been given to state his preference in advance of the hearing. The Sub Committee heard oral representations from the Investigating Officer and considered legal advice from the Deputy Monitoring Officer. The Sub Committee recognised the public interest in justice being seen to be done and agreed to hold the hearing in public.

The Sub Committee then heard oral and read written representations from the Investigating Officer and the witnesses, and the other documentation contained and annexed to the investigator's report, which set out details of the complaint against Councillor B. The sub Committee also watched and listened to the video recording of the Full Council meeting held on 12th November 2014.

Councillor B had declined the opportunity to be interviewed by the Investigating Officer. Documentation from him had however been included in the Investigation report. The Investigating Officer informed the Sub Committee that on 17th December 2015 she arranged for a draft copy of her report to be hand delivered to Councillor B to provide him with the

opportunity for him to comment upon it before it was finalised. However, Councillor B had ripped up the covering letter and refused to accept delivery of the draft report.

Mr D. G. informed the Sub Committee of how the Full Council meeting on 12 November 2014 had been video recorded by him. Mr I.M., a specialist in forensic audio and video enhancement, gave evidence as to how he enhanced the video recording and was able to say in his expert opinion that Councillor B did use the words “Oh, I forgot it is you Mr M you dickhead” and not the words “Councillor M, you again” as alleged by Councillor B.

Following the submissions and subsequent discussions the Sub Committee agreed the following facts that Councillor B:

- i. was at the 12th November 2014 Council meeting and commented “Oh, I forgot it is you Mr M you dickhead”;
- ii. at the Council meeting on the 14th January 2015 Councillor H made a request that Councillor B apologise for the allegedly defamatory comments he made at the previous Council meeting;
- iii. refused to apologise and he disputed the allegation that he had made any defamatory comment as he had not been reported to the Council’s Monitoring Officer for breaching the Members’ Code of Conduct;
- iv. That Mr I.A. is a specialist in forensic audio and video enhancement. His expertise is contained within his statement.

The Sub Committee reached these findings on the balance of probabilities. In doing so the Sub Committee found the witnesses to be credible.

The Sub Committee considered that Councillor B had been acting in his official capacity at the relevant time.

The Sub Committee then heard further evidence from the Investigating Officer as to whether the subject Member had breached the Members’ Code of Conduct.

The Sub-Committee concluded that as a result of his actions Councillor B had breached paragraph 3 (1) (b):

*“You must not bully or be abusive to any person”*

and paragraph 5 of the Council’s Code of Conduct under the following article:

*“You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Council into disrepute.”*

The Sub Committee considered that Councillor B’s comments would be considered abusive and disrespectful to most members of the public. To say them at a Council meeting and to disrespect the meeting and the Mayor is conduct which adversely affects public confidence in his ability to fulfil his councillor role. The words used and his conduct were capable of damaging the reputation of the Council thereby engaging paragraph 5 of the Members’ Code of Conduct.

The Sub Committee having consulted with the Independent Person resolved the following actions to be taken:

- (1) The formal Decision Notice is to be published on the Council’s website;
- (2) Details of the outcome to be published in the press and also in a newspaper circulating in the Hindley Green area;
- (2) That Councillor B submit to the Monitoring Officer an unconditional written apology addressed to the Council members in a form acceptable to the Monitoring Officer

(4) That should Councillor B be re-elected as a Councillor following the completion of his term of office in May, then for a period of two years from the date of his re-election:

- All emails Councillor B sends to Members or officers of the Council shall be managed before delivery to the Member or officer. They should only be forwarded on to the relevant Member or officer to respond to if they are respectful and courteous and do not contain abuse, rudeness or ridicule and are not considered to be harassing either in the content of the email or volume of emails he sends to the Member or officer. Members and officers are to respond to emails from Councillor Brierley to his Councillor's Council email address;
- Having particular regard to the nature and pattern of bullying behaviour consistently shown by Councillor B, any contact by him with Council officers should be restricted to emails, except for urgent matters requiring an immediate response, which may be made by telephone, but only to a named officer or officers supplied to him by the Council, from time to time;
- Councillor B's ability to support Brighter Borough applications for funding be removed.
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(5) Should Councillor B comply with sanction (3) above then the two year length of the sanctions referred to in (4) above shall be reduced to one year.

The Sub Committee wished that it be recorded that Councillor B refused to apologise for his abusive comment at the next Council meeting when given the opportunity to do so. He has consistently denied using the term "dickhead". This has meant that a formal investigation and hearing was necessary to establish his breaches of the Members' Code of Conduct. The resulting cost of investigating this complaint and holding this hearing is £9,000.