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16 September 2016

**Name of Cabinet Member:**

N/A - 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 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; and
2. 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 Notices 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 W: Fareham District Council**

This was a case where several council employees made a formal complaint about a councillor's visit to their department during which he was alleged to have made racist comments. These were:

- (a) that during a conversation with Officer A, he was heard to say "I was talking to an Officer earlier and told them that I did not want any foreigners living in my road";
- (b) that he subsequently said again to Officer A that he did not want any foreigners in his (housing) stock; and
- (c) shortly afterwards he started talking in an accent that sounded like a person of Indian / Pakistani origin attempting to speak English.

The Council's Audit and Governance Standards Sub-Committee concluded that the Councillor had breached the Council's Code of Conduct and decided to:

- (a) issue a letter of censure
- (b) arrange appropriate training for the councillor
- (c) require the councillor to make written apologies to the officers concerned
- (d) remove the councillor's permissions to access the civic offices for two months extend to attend statutory meetings or by invitation from officers.

The minutes of the hearing are attached at the Appendix to this report.

#### **1.2.3 Cllr T: Langton Matravers Parish Council**

This case is now two years old but members may be interested because it deals with a hearing into a complaint about a parish council member after the matter had been considered by the police. The police had decided that the councillor had

committed an offence under the Localism Act, in failing to declare a DPI at a meeting but decided not to prosecute. Instead the matter was dealt with by way of “community resolution” whereby a crime is recorded although the person admitting the offence does not acquire a criminal record.

Once the police matter had been disposed of, a hearing was held to consider whether the councillor’s behaviour had led to breaches of the code of conduct. Cllr T was found to have breached the Code of Conduct by remaining in a meeting while a matter in which he had an interest was discussed; he sought to persuade the parish council to agree that a discussion of a planning application (in which Cllr T had an interest) should take place in private. It was held that Cllr T used his position to gain an advantage for himself and so put his interests above those of the wider public.

#### **1.2.4 Cllr B: Shropshire Council**

Cllr B was a director of a company that was wholly owned by Shropshire Council. He was the subject of an investigation and report into an allegation that he had failed to declare an interest at a meeting of the company when it was considering the appointment of auditors. The interest arose because of a business relationship between the councillor and a director of the accountancy firm that was appointed as auditors. Both the councillor and the director were directors of another company.

The meeting complained of took place in August 2012 but the investigation and report did not take place until over 3 years’ later. At that point the investigator concluded that although the failure to declare could be considered to be at the lower end of the scale, the councillor offended against the principles of integrity, honesty and leadership in the code of conduct by failing to formally declare his relationship with the accountancy firm.

The councillor accepted that he should have declared an interest and agreed to apologise to the Council and to undertake training. He resigned from X Ltd. However he subsequently resigned first as leader of the council and then from the council itself. A complaint was then made to the police of misconduct in public office in December 2015. A report in the Local Government Lawyer in June 2016 states that the police had decided to take no further action.

This case is interesting because the Investigating Officer decided that the councillor was bound by the Code of Conduct when attending a meeting of company that was wholly owned by the council.

The report to Shropshire Council’s Standards Sub Committee is attached in the Appendix to this report.

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

1.3.1 The Ethics Committee has 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) a complaint that alleged that a councillor made outspoken and offensive comments to the press. This complaint is being reviewed at present under Stage 1 of the procedure

(b) Two separate complaints about two councillors where in both cases it was determined that the Code of Conduct had not applied to the matters complained of. No further action will therefore be 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 Acting Monitoring Officer ran a training session for parish councils on the Code of Conduct and Declaration of Interests on 28<sup>th</sup> July. This was attended by all Finham Parish councillors together with the clerks from both Finham and Keresley. The Acting Monitoring Officer also delivered a short training session to Allesley Parish Council on Disclosable Pecuniary Interests on 18<sup>th</sup> July which was attended by the clerk and four of the seven councillors. A further short session on the code will be arranged in the autumn.

1.3.6 The Acting Monitoring Officer will be holding two further training sessions for city councillors who were unable to attend the three sessions held on in June. These sessions take place on 8<sup>th</sup> and 13<sup>th</sup> September and the Acting Monitoring Officer will report orally on attendance at the meeting.

## **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; 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 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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Legal: Helen Lynch	Legal Services Manager (Place and Regulatory)	Resources	06.09.16	06.09.16
Director: Helen Lynch on behalf of Chris West	Executive Director Resources	Resources	06.09.16	06.09.16
Councillor Walsh	Chair of Ethics Committee		06.09.16	08.09.16

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

## **Appendix**

### **1. Minutes of Hearing: Cllr W, Fareham Borough Council**

It was proposed by the Chairman that the public and representatives of the Press be excluded from the meeting on the grounds that the matters to be dealt with involve the likely disclosure of exempt information, as defined in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

Having been duly seconded, it was RESOLVED that in accordance with the Local Government Act 1972 the Public and Press be excluded from the meeting, as the Sub Committee considers that it is not in the public interest to consider the matters in public on the grounds that they will involve the disclosure of exempt information, as defined in Paragraph 1 of Part 1 of Schedule 12A of the Local Government Act 1972.

### **Private Session**

The Chairman confirmed that this Standards Sub Committee had been convened to consider an allegation of a breach of the Members' Code of Conduct against Councillor W in the XX Department at the Civic Offices on Monday 21 March 2016.

The Chairman explained how the meeting would proceed, that it would be held in private session and the all information should be treated as confidential unless the Standards Sub Committee later resolved to remove the exemptions from publication.

The Chairman informed the panel that Councillor W had declined to attend the meeting and instead had submitted an email for consideration by the panel.

Councillor Miss H declared a Personal Interest for this item as she has a family member working in the same department as the officers who had alleged that a breach of the Members Code of Conduct had occurred. Councillor Miss H confirmed that her family member had not been present in the office at the time of the alleged incident due to holiday and that the situation had not been discussed. Councillor Miss H remained present in the room and took full part in the debate and voted on the item.

The Chairman asked the Monitoring Officer to present his report. In presenting his report and investigation findings, the Monitoring Officer presented copies of an e-mail exchange between him and Councillor W in which the Councillor disputed the accuracy of the record of the investigatory meeting held between them. The Monitoring Officer provided clarification about what was discussed in the interview and referred to Councillor W's submitted e-mail as evidence.

The Monitoring Officer then answered clarification questions put to him about the allegation and the subsequent investigation by members of the Standards Sub Committee.

At the invitation of the Chairman, Officer A was called upon to outline the complaint raised about Councillor W's alleged conduct during his visit to the XX department. Officer A then answered clarification questions put about the complaint. The Monitoring Officer also asked some clarification questions.



Officer A was thanked for attending and left the room and took no further part in the discussion.

At the invitation of the Chairman, Officer B was called upon to outline the complaint raised about Councillor W's alleged conduct during his visit to the XX department. Officer B then answered clarification questions put about the complaint. The Monitoring Officer also asked some clarification questions.

Officer B was thanked for attending and left the room and took no further part in the discussion.

At the invitation of the Chairman, Officer C was called upon to outline the complaint raised about Councillor W's alleged conduct during his visit to the XX department. Officer C then answered clarification questions put about the complaint. The Monitoring Officer also asked some clarification questions.

Officer C was thanked for attending and left the room and took no further part in the discussion.

The Chairman distributed copies of an email which had been submitted by Councillor W for the panel to consider.

The Designated Independent Person, Mr B, was invited to give his views on the allegation.

There were further clarification questions about the allegation by Members of the Standards Sub Committee.

The Monitoring Officer was invited to give his final summary of the investigation into the alleged misconduct.

At this point, the Chairman adjourned the meeting to enable Members of the Standards Sub Committee to deliberate and reach a conclusion. The Monitoring Officer and Mr B left the room and took no further part on the deliberation. The Solicitor to the Council and the Head of Democratic Services remained.

The Chairman confirmed that having considered all of the reasons given for the call-in, the Standards Sub Committee now had to consider the recommendations as set out in the report, that being:

- (a) determine whether or not a breach of the Members' Code of Conduct had taken place;
- (b) subject to the decision at recommendation (a), determine what action(s) should be taken in accordance with Standards Arrangements, as approved by Council on the 21 June 2012; and
- (c) subject to the findings of (a) and (b) above, the Report including the Minute of the decision be no longer treated as exempt information and be open for public inspection.

During the debate on the item, the Standards Sub Committee expressed its disappointment in the conduct of Councillor W which fell far short of the usual high ethical standards displayed by both Elected Members and Officers of Fareham Borough Council. The Sub Committee also voiced its alarm at the racist nature of the incident.

Following deliberation of the Standards Sub Committee and consultation with Mr B, the Council's Designated Independent Person, a motion was proposed and seconded to resolve that a breach of the code had taken place in respect of paragraphs 3.9, 3.13 and 3.14 of the adopted Code of Conduct and further that the appropriate actions would be to:

- formally censure Councillor W;
- request that he provide a full written apology to the officers who raised the complaint about his conduct;
- instruct the Monitoring Officer to arrange appropriate training for Councillor W;
- remove Councillor W's access permissions to the Civic Offices for a period of 2 months, with the exception of his requirement to attend formal Council or Committee meetings or where his attendance is required by Officers; and
- report the findings of the Standards Sub Committee to the Council by submitting the minutes of the meeting for noting.

These actions are in accordance with paragraphs 8.1.2, 8.1.3, 8.1.6 and 8.1.8 of Appendix A to the report.

Upon being put to the vote, the motion was declared CARRIED.

The Chairman proposed that the report, including the minute of the decision be no longer treated as exempt information and be open for public inspection, save for the names of individuals involved.

Having been duly seconded, the motion was declared CARRIED.

RESOLVED that:

- (a) a breach of the Members' Code of Conduct at paragraphs 3.9, 3.13 and 3.13 had taken place;
- (b) the following sanctions be applied:
  - i. Councillor W would receive a letter of censure from the Standards Sub Committee Chairman;
  - ii. Councillor W be requested to provide a full written apology to the officers who raised the complaint about his conduct;
  - iii. the Monitoring Officer be instructed to arrange appropriate training for Councillor W;
  - iv. the removal of Councillor W's access permissions to the Civic Offices for a period of 2 months, with the exception of his requirement to attend formal Council or Committee meetings or where his attendance is required by Officers; and

- v. the Standards Sub Committee report its findings to the Council by submitting the minutes of the meeting for noting; and
- (c) the report, including the minute of the decision be no longer treated as exempt information and be open for public inspection, save for individuals' names.

## **2. Report to Standards Sub-Committee: Cllr B, Shropshire Council**

### **1. Summary**

- 1.1.A complaint received from Councillor T which alleged that Councillor B failed to comply with the code of conduct of Shropshire Council was referred, at its meeting held on 30 July 2015, by the Standards Sub Committee for an investigation.
- 1.2 The Monitoring Officer did not consider that it was appropriate to carry out the investigation internally and appointed O D to undertake the investigation.
- 1.3 The investigation by Mrs D is now complete and her report concludes that, by failing to disclose at a meeting of the Board of directors of X ltd that a director of a company who were to be considered to undertake the audit and accountancy function on behalf of X ltd, was known to him and that they had mutual business interests, Councillor B failed to comply with the Code of Conduct of Shropshire Council.
- 1.4 Councillor B accepts the findings and agrees that, with hindsight, he should have formally declared his interest. He has agreed to undertake training and to issue a formal apology to the Council.

### **2. Recommendation**

- 2.1 That, subject to Councillor B making an apology and undertaking training on his responsibilities under the code of conduct, there be no further action in relation to the finding by the Investigating Officer that, by failing to disclose at a meeting of the Board of directors of X ltd that a director of a company which was to be considered to undertake the audit and accountancy function on behalf of X ltd, was known to him and that they had mutual business interests, Councillor B failed to comply with the code of conduct of Shropshire Council.

### **3. Risk Assessment and Opportunities Appraisal**

- 3.1 The Localism Act 2011 places a requirement on Local Authorities to promote and maintain high standards of conduct by members and co-opted members

of the authority. Failure to resolve the complaint appropriately risks damaging the reputation of the authority.

#### 4. Financial Implications

4.1 In the event that further action is considered appropriate, costs may involve officer time and /or the costs of arranging a further hearing.

#### 5 Background

5.1 It was alleged by Councillor T that Councillor B failed to comply with the code of conduct of Shropshire Council.

5.2 The Standards Sub Committee, at its meeting held on 30 July 2015, referred the allegation to the Monitoring Officer for an Investigation. The Monitoring Officer engaged the services of OD to carry out the investigation.

5.3 After carrying out her Investigation, Mrs D concluded that Councillor B had failed to comply with the Code of Conduct of Shropshire Council. Her report and appendices are attached.

5.4 As required by the legislation, the Monitoring Officer has consulted with the Independent Person and, in accordance with the arrangements adopted by Shropshire Council to deal with allegations of a failure to comply with the code of conduct, considers that the matter can reasonably be resolved without the need for a formal hearing. The Independent Person agreed with the proposals of the Monitoring Officer to request that Councillor B issue a formal apology and undertake training on his responsibilities under the code of conduct.

5.5 The Complainant, Councillor T, considers that an apology and a commitment to undertake training on the code of conduct represents a reasonable outcome.

5.6 Councillor B has agreed to undertake training provided by the Monitoring Officer and to issue the following apology:

**“Councillor B apologises to the Council for failing to formally declare a conflict of interest when making a decision at X Ltd.**

An investigation into an allegation about the conduct of Councillor B has concluded that he failed to comply with the code of conduct of Shropshire Council by failing to formally disclose a conflict of interest at meetings of the Board of X Ltd.

Councillor B apologises to the Council for failing to disclose at those Board meetings his personal and business relationship with a director of the company eventually appointed as accountants and auditors of X Ltd. Councillor B accepts with hindsight that he should have formally disclosed the nature and

extent of his interest at the meetings and confirms that he will attend training to make sure he is fully aware of his responsibilities on such matters under the Council's Code of Conduct and to ensure such oversight is avoided in the future.

Councillor B would also like to add that he has resigned from his position as Director of X Ltd in order prevent any future risk of such conflicts of interests arising and because it is the right time for the appointment of a Chairman independent of the Council.”

5.7 The options available to the Sub Committee are as follows:

5.7.1 Accept the findings of the report and the recommendations (following consultation with the Independent Person) of the Monitoring Officer that it is appropriate to resolve the matter informally in the manner proposed.

5.7.2 refer the findings in the report for a formal hearing.