
Ethics Committee
Council

20 July 2017
5 September 2017

Name of Cabinet Member:

N/A - Ethics Committee

Director Approving Submission of the report:

Deputy Chief Executive, Place

Ward(s) affected:

None

Title: Annual Report of Ethics Committee

Is this a key decision?

No

Executive Summary:

Recommendations:

The Ethics Committee is recommended to:

- (1) Approve the Annual Report of the Committee; and
- (2) recommend that Council notes the Annual Report and to consider whether there is any work within the Committee's terms of reference that Council would wish the Committee to undertake.

Council is recommended to:

To note the Annual Report of the Ethics Committee and to consider whether there is any work within the Committee's terms of reference that Council would wish the Committee to undertake.

List of Appendices included:

None

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?

Yes

Report title: Annual Report of Ethics Committee

1. Context (or background)

1.1 The Council's Ethics Committee was established in 2012 following the introduction of new duties and responsibilities regarding ethical conduct in the Localism Act 2011. The Council as a whole has a legal duty to promote and maintain high standards of conduct by members and co-opted members of the authority. The Ethics Committee, through its work, assists in discharging this statutory duty.

1.2 The terms of reference of Ethics Committee also include:

- (a) Making recommendations to the Council on the appointment of "independent persons" under the Localism Act 2011;
- (b) Approving and revising the Complaints Protocol which will set out the detailed procedures for considering complaints made against Elected and Co-opted Members under the Code of Conduct for Elected and Co-opted Members;
- (c) Considering complaints made against Elected and Co-opted Members under the Code of Conduct for Elected and Co-opted Members in accordance with the Complaints Protocol;
- (d) Monitoring the operation of the Code of Conduct for Elected and Co-opted Members and making appropriate recommendations to the relevant body;
- (e) At the request of the member or co-opted member concerned, reviewing any decision of the Monitoring Officer not to grant a dispensation in relation to disclosable pecuniary interests in accordance with Section 33 of the Localism Act 2011;
- (f) Monitoring the operation of the Code of Conduct for Employees and making appropriate recommendations to the relevant body;
- (g) Considering complaints made against Elected Members of Finham Parish Council, Keresley Parish Council and Allesley Parish Council under the relevant Parish Council's Code of Conduct for Elected Members in accordance with the City Council's Complaints Protocol; and
- (h) Considering any other matters which are relevant to the ethical governance of the Council, its Members or Employees.

1.3 The Committee approves a work programme for each year which includes regular reports as well as one off pieces of work. At its meeting in March 2017, the Committee agreed that in future it would submit an annual report to Council setting out the work that it has accomplished in the past year. This report comprises the first Annual Report of the Ethics Committee.

2. The Annual Report and Recommended Proposal

2.1 About the Committee

Ethics Committee comprises five councillors. In the municipal year 2016/17, the membership of the Committee was Cllr Walsh (Chair), Cllr Andrews, Cllr Bigham, Cllr Gannon and Cllr Mulhall. Although not a member of the Committee, any Independent Person appointed by the Council is encouraged to attend the meetings. The Committee held four scheduled meetings in 2016/17 with an additional hearing, which ultimately had to be postponed.

2.2 Code of Conduct Complaints

The Council received a total of ten new complaints against councillors in the municipal year 2016/17. All complaints were against city councillors and no complaints were received about councillors from any of the three parish councils. In five cases the complainants were members of the public although one complaint was not pursued by the complainant. In the remaining five cases, the complaint was made by another councillor. In seven cases the Chief Executive and Acting Monitoring Officer decided to take no further formal action either because an initial review revealed no breach of the Code or because the matters which were the subject of the complaints related to matters which occurred when the subject councillor was not acting as an elected member. In one case, though, a member was required to undertake training and in another the councillor apologised to the complainant. In a final case the Acting Monitoring Officer provided guidance to the subject member on future conduct.

In an eleventh case, there was no formal complaint against a councillor but the Acting Monitoring Officer decided that the matter, because it involved comments made to the press was sufficiently serious to merit an investigation in any event. The Monitoring Officer concluded that the subject member had breached the Member Code of Conduct by failing to:

- behave in accordance with all his legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures including the use of Council resources;
- always treat people with respect, including the organisation and public he engages with and those he works alongside;
- provide leadership through behaving in accordance with these principles when championing the interests of the communities with other organisations as well as within the Council.

The Subject Member, having consulted with the Independent Person, accepted the Monitoring Officer's conclusion. The Committee subsequently held a sanctions hearing and resolved to censure the Member and require them to undertake training.

Finally the Committee held a full hearing into a Code of Conduct complaint in March 2017. This related to a complaint that had been lodged in the municipal year 2015/16. The complaint arose out of an incident where the councillor had complained to a shop owner about litter outside the shop. The shop owner alleged that:

- (a) By raising concerns about litter near a property that he owned, the councillor was acting in his own interests and not in the public interest.
- (b) The councillor should have referred his concerns to a councillor for the ward where the litter was located.
- (c) The councillor should have remained objective and should not have assumed that the litter was the fault of the complainant; he should not have become angry and personal when raising his concerns with the complainant.
- (d) The councillor should have been clear, from the outset of his interaction with the complainant, that he was a councillor
- (e) By being aggressive and abusive towards the complainant, the councillor failed to treat him with respect and
- (f) The councillor breached the Code by virtue of his aggressive and abusive behaviour towards him and abused his position as a councillor.

The Committee upheld the conclusions of the 2 independent Investigating Officers and found that:

- the councillor had been aggressive and racially abusive towards the shop owner; and
- he had threatened to close his shop down; but:
- the other allegations did not constitute a breach of the Code of Conduct.

The Committee decided to:

- (1) publish its findings in respect of the councillor's conduct;
- (2) send a formal letter of censure to the councillor;
- (3) report its findings to full Council with a recommendation that it censures the councillor;
- (4) recommend to the councillor's Group Leader that he be removed as Shadow Cabinet Member for Policing and Equalities; and
- (5) recommend to the Acting Monitoring Officer that she arranges appropriate training.

At a special meeting in May 2017, full Council resolved to censure the councillor.

All councillors who have been the subject of a complaint and have been required to undertake training, have completed that training.

2.3 Code of Conduct Training

It is a requirement that all councillors attend Code of Conduct training at least every 3 years. The Acting Monitoring Officer held five training sessions for city councillors on the Code of Conduct in July and September 2016. These were very well attended with all but 9 councillors who were due to undertake training, attending the sessions. The Acting Monitoring Officer is holding a further 2 sessions in July 2017 specifically

aimed at those councillors who could not attend the 2016 training. Four councillors attended the first of these sessions and the remainder are booked to attend the later session.

In addition the Acting Monitoring ran a training session for parish councillors in 2016 on the Code of Conduct and Disclosable Pecuniary Interests. This was attended by the clerk and all councillors from Finham Parish Council and the clerk of Keresley Parish Council. The Acting Monitoring Officer also attended two meetings of Allesley Parish Council and delivered the same training to their clerk and councillors.

2.4 Appointment of Independent Persons

The Localism Act requires all local authorities to appoint at least one person as an "Independent Person". The Independent Person's views must be sought by the authority on Code of Conduct allegations and their advice may be sought by a member who is alleged to have breached their Code of Conduct. There are very strict rules about who may and may not be eligible to be an Independent Person.

The City Council's Independent Person resigned in July 2016. Following advertisement, for at least three replacement Independent Persons, five applications were received. An interview panel was set up consisting of the Chair of Ethics Committee Cllr Seamus Walsh, Cllr Abdul Khan and Councillor John Blundell.

Four candidates were invited to interview on 18 April 2017 and the Panel decided to recommend the appointment of all four candidates: Steve Atkinson, Ann Barton, Ruth Wills and Peter Wiseman. While it had originally been intended to appoint up to three independent persons, the panel felt that each candidate had different qualities and skills which would benefit the Council in meeting its legal duty to uphold and promote high standards of ethical behaviour among elected and co-opted members. In addition, having a pool of independent persons will assist where an independent person has a conflict of interest in a particular matter and will make it easier for members to consult an independent person on aspects of ethical conduct. The intention is that the Independent Persons may, in time, be able to assist other local authorities in the West Midlands where there is no Independent Person available.

On 18 May 2017, Annual Council confirmed the appointment of all four applicants as Independent Persons. The Monitoring Officer has arranged some training for the Independent Persons immediately following the meeting of the Ethics Committee.

2.5 Review of Complaints Protocol

The Council's Complaints Protocol was approved by Ethics in 2012 when the Localism Act 2011 introduced a requirement that all councils have to have in place arrangements for dealing with allegations of a breach of the Code of Conduct and of determining those allegations. The Council's Complaints Protocol sets out these arrangements and the Committee's terms of reference include approving and revising the Protocol. The Protocol sets out the detailed procedures for considering complaints made against Elected and Co-opted Members under the Code of Conduct for Elected and Co-opted Members.

The Committee decided to review of the Protocol drawing on experience of its operation since 2012. A revised protocol was approved in March 2017 and will be used to determine future complaints under the Code of Conduct, The new Protocol is shorter and should be simpler and easier to navigate and understand.

2.6 Whistleblowing Policy

The Ethics Committee considered that the Council's Whistleblowing should be reviewed in light of the Rotherham report where that council was criticised for not having effective procedures in place for reporting suspected wrongdoing. A revised policy was approved by the Committee for consideration by the Audit and Procurement Committee and by the Cabinet Member for Policy and Leadership in April 2017. The Policy has been reviewed to ensure that it is fit for purpose and complies with legislative requirements.

2.7 Officer and Members Gifts and Hospitality

The Council has strict rules about when and if members and officers can accept gifts and/or hospitality. In the past year the Committee has reviewed the gifts and hospitality section of the Employee Code of Conduct and recommended changes to that policy to full Council. The changes in the policy were approved by full Council on 6 September 2016. The Committee considers that the policy now reflects the way in which the Council through its officers operates and provides more effective checks and balances on the receipt of gifts and hospitality. All directorates now have a common register which requires gifts and hospitality to be approved by a senior officer.

In addition, the Committee reviews the registers of gifts and hospitality for both members and officers every six months. Members have been reminded of the need to declare any gifts or hospitality within 28 days of receipt and not to wait until they have a number of instances to record.

2.8 Sanctions for Code of Conduct Breaches

Over the past year the Committee has been monitoring concerns about the lack of any meaningful sanctions for councillors who breach the Code of Conduct. In particular two councils and the Committee on Standards in Public Life have expressed concerns to the Government that the regime under the Localism Act 2011 does not give local authorities the ability to do anything more than censure councillors who breach their Code. Councillors cannot be compelled to undertake training and it is up to party groups or leaders to decide whether to remove councillors from committees or executive positions. There is no longer any power to suspend a councillor and the power to disqualify a person from elected office is only available to the courts if a councillor is convicted of an offence relating to Disclosable Pecuniary Interests.

The Committee on Standards in Public Life is holding a seminar to discuss potential ethical standards issues arising over the next five years on 10 July, the Acting

Monitoring Officer will be attending the seminar and will report back to the next meeting of the Ethics Committee.

2.9 Operation of Register of Disclosable Pecuniary Interests

The Committee undertook its first review of the operation of the Register of Disclosable Pecuniary Interests in July 2016 following the publication of the register through the Council's committee management system, Modern Gov. The migration of registers to this system has meant that members, with assistance from Member Services staff where required, have been able to update changes in their interests quickly and easily and this has helped to ensure that the online register is up to date at all times. The system provides a record of additions and deletions and allows officers to see how often individual councillors' registers are being viewed online by the public. In addition officers regularly remind councillors of the need to keep their register up to date, particularly on re-election or after being appointed to outside bodies at Annual Council.

2.10 Member Officer Protocol

In July 2016 the Committee considered reports that had been published in connection with two other councils which had raised concerns about, among other things, governance in those councils. In one case both councillors and officers were heavily criticised in terms of political interference in day-to-day management of some services, 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.

In the other case a public interest report by external auditors was published into a number of matters of concern at another council. These included failures of governance in the management of major projects and in relation to member conduct. In particular the report concluded 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.

The Acting Monitoring Officer undertook 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 could result in an erosion of ethical standards.

Such arrangements are typically set out in Member/Officer Relations Protocols and a Monitoring Officer Protocol. The Committee therefore requested officers to draft a Member/Officer Protocol and Monitoring Officer Protocol for its consideration. The Member Officer Protocol is in the final stages of drafting and will be considered by

the Committee at a future meeting. Full Council will also have an opportunity to approve the Protocol.

2.11 Recommendation

The Committee is recommended to

- (1) Approve the Annual Report of the Committee; and
- (2) recommend that Council notes the Annual Report and to consider whether there is any work within the Committee's terms of reference that Council would wish the Committee to undertake.

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

Not applicable.

5. Comments from Deputy Chief Executive, Place

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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