
14 December 2017

Name of Cabinet Member:

N/A - Ethics Committee

Director Approving Submission of the report:

Deputy Chief Executive, Place

Ward(s) affected:

None

Title: Code of Conduct Update

Is this a key decision?

No

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, 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, in consultation with the Chair of the Ethics Committee.

List of Appendices included:

Appendix A: LGA Response to Consultation on Government Proposals to Extend Criteria for Disqualification from Office

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 has agreed that the Monitoring Officer will 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 where councils publish details of their conduct hearings in public.

1.2.2 Councillor B: Tendring District Council

This case concerned an incident at an air show that was organised by the district council. A councillor was acting as a steward at the air show and became involved in an altercation with a member of the public who she considered had been driving dangerously. This resulted in her slapping the member of the public who she claimed had sworn at her and punched her. This was denied by the member of the public. She was subsequently convicted of assault but given an absolute discharge. The member of the public was not prosecuted but made a complaint under the Code of Conduct along with another member of the public.

The Standards Committee concluded that Cllr B had breached the Code of Conduct by:

- Bringing her office and the Council into disrepute; and
- Failing to comply with and observe the law

The sanctions imposed included:

- Reporting its findings to Council for information
- Recommending that Cllr B be removed from any committees for one month
- Training on the Code of Conduct

1.2.3 Councillor Br: Torridge District Council

Cllr Br was a member of the Community and Resources Committee, the main decision-making body of the Council. He was the subject of a complaint that he had disclosed information to the press which had been considered at a meeting of the

Committee when it was in private session. Cllr Br had seconded the motion to go into private session but had released confidential information to the press soon after the meeting had finished without consent.

The Standards Committee decided that Cllr Br had breached the Code of Conduct by:

- Disclosing confidential information when not permitted to do so; and
- Failing to have regard to relevant advice provided by council officers

The Committee decided to:

- Censure the councillor
- Report its findings to full Council
- Recommend that Cllr Br be removed from the Standards Committee

An interesting point about this point is that Cllr Br was a member of the “non-aligned” group. This was apparently not a political group as such but a loose grouping of several councillors. Cllr Br remained a member of the Standards Committee for at least the next meeting of the committee where it was reported that he had not been removed. He does not now appear to be a member of the Standards Committee but is still a member of the committee whose confidential information he was alleged to have disclosed.

1.2.4 Councillor C: Pendle Borough Council

This case arose from a complaint by two councillors that another councillor had posted on her Facebook page a joke which was both racist and highly offensive. It was alleged that the post was picked up local, regional and national press, bringing the Council into disrepute. One councillor was approached by members of the public complaining about the posting which was shared on Cllr C’s Facebook page. Three further complaints were made by members of the public to the Council.

The post appeared on Cllr C’s Facebook having been posted originally by someone else. It remained there at least overnight and was seen by a number of Facebook users who reacted angrily to it. Cllr C later deleted her Facebook account and made a written apology in a local newspaper. She said that she had been trying to delete the post when she accidentally shared it. She was suspended from her party group.

A Hearings Panel decided that the Councillor had breached the Code of Conduct by failing to treat people with respect and failing to meet the high standards of leadership and example expected of councillors. The Councillor was criticised for not ensuring that she was able to use social media competently.

The Hearings Panel decided, amongst other things, to recommend that full Council censure the councillor and that she be removed from all but one committee for 12 months and social media training.

1.2.5 Sandwell Council: An Update

Committee members will recall that the Monitoring Officer has previously reported on a public interest report issued by Sandwell Council. That report, amongst other things, concluded that there was a case of wrongdoing by some councillors to be answered. The report and the “pre-formal” investigation which informed it, were placed in the public domain. Legal proceedings by one councillor, Cllr Hussain to prevent publication were unsuccessful.

The Council was proposing to carry out a formal investigation under the Localism Act into the allegations against Cllr Hussain who sought judicial review of the High Court’s decision to refuse to prevent publication of the report and appealed against the court’s declaration that publication of the report was lawful. These proceedings delayed the formal Code of Conduct investigation.

The Court rejected all of the Councillor’s claims which included:

- The power of the Council to conduct both formal and informal investigations
- The publication of the report and investigation, including claims that the investigation was biased, that there was no power to investigate misconduct before the Localism Act came into force and that the investigation was oppressive
- That the investigating officer had predetermined the outcome; and
- That the publication was unlawful under the European Convention on Human Rights and the Data Protection Act 1998.

The judge decided that there was a serious prima facie case against the Councillor which should be investigated under the Localism Act. The publication of the earlier report and investigation was fair and lawful in all the circumstances. He said that the “Council had a legitimate interest in openness and transparency and in securing financial probity in publishing the documents in question.” He also said that the public and press “had a strong interest, also based upon openness and accountability, in knowing what steps the Council was taking to investigate the alleged wrongdoing and potentially serious misuse of public assets and funds”.

1.2.4 Government Proposals to Extend Criteria for Disqualification from Office

The Department for Communities and Local Government has issued a consultation regarding expanding the disqualification criteria for local councillors.

The standards and ethics legislation no longer permits the suspension or disqualification of councillors as a consequence of a finding that the Code of Conduct has been breached. However, a councillor can be disqualified from holding office by court order upon conviction for breaching the Disclosable Pecuniary Interests provisions.

In addition, persons are disqualified from being a councillor if they:

- have been sentenced to prison for three months or more (including suspended sentences) during the last five years
- have been convicted of a corrupt or illegal practice by an election court
- are the subject of a bankruptcy restrictions order or interim order.

The Government is proposing to widen the disqualifications to cover sex offenders and certain anti-social behaviour, namely:

(a) Sexual Offences

The Government is considering whether anyone subject to sex offender notification requirements (i.e. on the sex offenders' register) should be barred from standing for election or holding office as a local authority member. The notification requirements accompany cautions and convictions for criminal offences, as well as civil orders. The notification period (and therefore the proposed disqualification) varies depending on the outcome - e.g. 2 years when a person has received a caution for a sex offence, for prison sentences of 6-30 months the notification period is 10 years, and indefinite for prison sentences beyond 30 months. Civil Orders such as Sexual Harm Prevention Orders are accompanied by a notification period of a minimum of 5 years.

(b) Anti-Social Behaviour

Of the range of anti-social behaviour powers held by the courts, police, councils and social landlords, only the 2 court-issued orders are proposed to act as a disqualification for holding office. Any person issued with a Civil Injunction or a Criminal Behaviour Order would be barred from running for election or holding office for the duration of the order. The Criminal Behaviour Order is issued by a criminal court upon conviction of a criminal offence and will last for a minimum of 2 years. A Civil Injunction is a civil order with a lower burden of proof, the term of the order can be for either a fixed or an indefinite period.

(c) No Retrospective application

The proposed changes would not apply to any sitting councillors subject to sex

offender notification requirements, civil injunctions or criminal behaviour orders, although councillors would be prohibited from running for re-election if these orders remained in force at the next election.

Comments

The Committee will see that the proposed changes represent a significant departure from the current legislation on disqualification of local councillors, by extending disqualification to some non-custodial criminal sentences, cautions and civil orders (as well as criminal convictions resulting in prison sentences of 3 months or more).

Members may wish to note that the proposals would, for instance, disqualify someone subject to a civil anti-social behaviour injunction but not (other than sex offenders) in general those convicted of criminal offences (even if imprisoned for just under 3 months) who would remain free to stand or continue as a member.

The consultation is silent on whether the Government intends to reinstate any suspension/disqualification powers in relation to breaches of the Members' Code of Conduct.

The Local Government Association has recently issued its response to the consultation and this is attached as an Appendix to this report for members' consideration.

1.3. The local picture

Complaints under the Code of Conduct

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 four new complaints since the date of the last Committee meeting. These are:

- A complaint by a member of the public that two councillors failed to deal with their correspondence. This is being dealt with at Stage 1 of the Complaints Protocol.
- A complaint by a member of the public that a councillor failed to treat them with respect. This is being dealt with at Stage 1 of the Complaints Protocol.
- A complaint by a member of the public that another councillor had failed to treat them with respect. This is being dealt with at Stage 1 of the Complaints Protocol

- A complaint by an employee about the behaviour of a councillor. This is being dealt with at Stage 1 of the Complaints Protocol

The Monitoring Officer will update the Committee at the meeting on the latest position on each of these cases.

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.

Member Training

1.3.4 Both councillors who were required to undertake Code of Conduct training attended a final session on 6 November. The Monitoring Officer will be making arrangements to offer further training in 2018 to other councillors who will need to attend a course along with newly elected councillors.

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 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 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 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

Report author(s): Carol Bradford

Name and job title: Carol Bradford, Corporate Governance Lawyer, Regulatory Team, Legal Services

Directorate: Place

Tel and email contact: 02476 833976 carol.bradford@coventry.gov.uk

Enquiries should be directed to the above person.

Contributor/approver name	Title	Directorate or organisation	Date doc sent out	Date response received or approved
Contributors:				
Suzanne Bennett	Governance Services Officer	Place	20.11.17	
Names of approvers for submission: (officers and members)				
Finance: Graham Clark		Place	21.11.17	21.11.17
Legal: Julie Newman	Legal Services Manager	Place	20.11.17	20.11.17
Barry Hastie	Director of Finance and Corporate Services	Place	21.11.17	21.11.17
Martin Yardley	Deputy Chief Executive Place	Place	21.11.17	23.11.17
Councillor Walsh	Chair of Ethics Committee		24.11.17	1.12.17

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