
Ethics Committee

26 June 2019

Name of Cabinet Member:

N/A - Ethics Committee

Director Approving Submission of the report:

Director of Finance and Corporate Services

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 standards regime nationally 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 City Solicitor and Monitoring Officer, in consultation with the Chair of the Ethics Committee.

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?

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, any cases reported are taken from general research where councils publish details of their conduct hearings in public.

1.2.2 Councillors Y, G and W: Lancaster City Council

Three councillors have been subject to a special Standards Committee hearing into allegations that they had breached the Code of Conduct following an investigation into a leak of sensitive information. It is difficult to give an accurate picture of what the issues were in this case as Lancaster City Council does not normally publish its Standards reports or investigations. However it would appear that sensitive information about a fourth councillor was leaked without authority and during the subsequent investigation, the behaviour of Cllrs Y, G and W was called into question.

The summary of findings published by the Council shows that:

Cllr Y: had brought the Council into disrepute by misleading the Council's investigator. The Committee concluded that his account of events was inconsistent, and he appeared to have tried to mislead the investigator about his whereabouts on a particular weekend. The Committee decided that Cllr Y's membership of the Standards Committee should be removed.

Cllr G: had (1) brought the Council into disrepute by misleading the Council's investigators and by his failure to take part in the investigation and (2) that he had been guilty of conduct that amounted to intimidation of a person who is likely to be involved in the investigation or in its administration. This involved intimidation of the Chief Executive Office and intimidation during an interview with Cllr W.

In particular, the Committee concluded that Cllr G misled officers during the investigation into the leak of sensitive data in that he made a misleading statement about when he was aware of standards hearing. The Councillor failed

to cooperate with the reasonable requests of the Monitoring Officer to participate in an interview concerning the leak of sensitive information. The Committee found that the Councillor's misleading statement and failure co-operate with the Council's Monitoring Officer was a course of conduct that offended against the principles of accountability, openness and honesty. As such they were found to be actions or omissions that brought the office of Councillor and the Council into disrepute.

With regard to the Chief Executive, Cllr G had told the Chief Executive that he thought one of Cllr G's colleagues was being mistreated or bullied in connection with a Standards Committee matter. Cllr G threatened to go to the press if the matter was not resolved that day. This was inappropriate conduct by the Councillor and the Committee found that the threat made in respect of the Standards Committee matter amounted to intimidation of a person (the Chief Executive) involved in the administration of the investigation.

Cllr G subsequently attended an interview of Cllr W. It was explained to him that it was inappropriate for him to be in attendance by the Council's Monitoring Officer. He did not take any active part in the interview. The Committee found that Cllr G's presence at the interview was a means of asserting control or influence over Cllr W. The Committee considered this to be inappropriate conduct and intimidation contrary to the Members Code of Conduct.

The Committee determined that Councillor G was to be censured in the minutes of the hearing.

Cllr W: The Committee found that the Cllr W had (1) brought the Council into disrepute by seeking sensitive information to pass onto members of the public and (2) that he bullied a member of staff.

In particular, the Committee concluded that Cllr W had telephoned the Council's democratic services department in order to seek confirmation as to the identity of a member of public connected to a Standards Committee case. The Committee found that the telephone call was a misuse of the Councillor's powers in that the request to a junior member of staff was such as to undermine the junior officer. This is a course of behaviour defined as bullying in the Code of Conduct.

The Councillor was later interviewed by officers. Cllr G attended the interview in support of Cllr W. Towards the end of the interview Councillor W repeatedly asked officers for the name of the subject member of the public. He informed officers that he wanted the name to pass onto his customers. The Committee found that the request, and the Councillor's stated motive for the same to be unacceptable behaviour.

The Councillor's inappropriate requests for information evidenced a lack of integrity. This being the case, the behaviour was such as to bring the office of Councillor or the Council into disrepute contrary to paragraph 5 of the Members Code of Conduct.

The Committee determined that Councillor W was to be censured in the minutes of the hearing.

1.2.3 Councillor G: Devon County Council

At its meeting in January 2019 the Committee considered a report about an investigation into, and ongoing legal action connected with allegations that Cllr G, former leader of the Council, had sexually harassed four of its employees. In October 2018, Cllr G issued a claim for judicial review of the Council's decision. He raised at least 10 grounds of challenge including lack of procedural fairness. Permission was refused on these grounds however permission was allowed on one narrow point – whether or not the Council were allowed to impose a sanction restricting access to Council premises.

Cllr G had also appealed against his refusal for permission in respect of the other grounds and a hearing was expected to take place in early 2019. That hearing has now taken place and his application was rejected, with permission on all of the remaining grounds refused and the earlier award of costs to the Council upheld.

The case underlines the freedom allowed to local authorities under the Localism Act 2011 in regulating their own procedures for dealing with complaints against elected members. In Devon's case, their complaints procedure provided for anonymity of the complainants and did not allow for an oral hearing before the Standards Committee. The court held that, when assessed overall, the procedure was not unfair – Cllr G had the opportunity to answer the complaints in person before an independent QC, and to provide comments on his draft report, as well as being able to make written submissions to the Standards Committee. The judge also appeared to accept the Council's argument that Article 6 of the European Convention on Human Rights does not apply to local government standards matters, which are essentially disciplinary in character.

1.2.4 Birmingham City Council

Members of the Committee may be aware of the long running management dispute at Birmingham City Council in 2017 concerning its refuse collection service. The Leader of the Council at that time was Cllr John Clancy. Cllr Clancy

resigned as Leader in September 2017 after criticism of his handling of the dispute.

After the dispute was concluded, the city council asked a firm of lawyers, VWV, to consider whether appropriate and lawful processes were followed in reaching and approving an agreement to end the industrial action, purportedly made on 15 August 2017. The review did not seek to consider operational issues that led to the dispute but concentrated on the lawfulness of decision-making.

VWV reached a number of conclusions about how council decision-making operated including:

- Cllr Clancy did not have the authority or power to enter into an agreement as set out in the ACAS statement made on 15 August 2017.
- An “informal” meeting of Cabinet on 18 August 2017, had no power to ratify the agreement.
- The council failed to accept the “norms of decision making” and that day to day governance of how a council ought to be run was, in 2017, “missing/distorted”.
- The council needed to consider whether there were grounds for bringing action against a member for both misconduct and misfeasance in public office.
- Member/officer protocols ought to be reviewed.
- There might be potential breaches of the Councillor’s Code of Conduct which the council needed to consider.

In a statement the council said that it had made a series of improvements to its Corporate Governance plan to address these issues which was monitored monthly. It had also referred the matter to the Chair of its Standards Committee to consider whether further action was needed and had reviewed and revised its elected member induction programme. In addition, its member development programme was being improved as part of a four-year plan, and the findings of this independent review would be built into that process.

Cllr Clancy refused to take part in the review and had said that the report was “utter nonsense from start to finish” and “a whitewash”. He insisted that he had acted appropriately and with full legal powers throughout the dispute. He also claimed a failure by officers to carry out his instructions “and to frustrate them politically and administratively” was unlawful and actionable.

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 one new complaint since the date of the last Committee meeting, which relates to a city councillor. The complaint is at Stage 1 in the complaints protocol.
- 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 a Parish Councillor.

Code of Conduct Training for Parish Councils

- 1.3.4 The Monitoring Officer and Deputy Monitoring Officer have offered to hold training sessions on the Code of Conduct for all three parish councils in the Coventry area. A session has been arranged for Keresley Parish Council in early July.

2. Options considered and recommended proposal

Members of the Committee are asked to:

1. Note the cases determined under the standards regime nationally 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 City Solicitor and Monitoring Officer, 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 Any actions arising from this report will be implemented as soon as possible.

5. Comments from Director of Finance and Corporate Services

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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