
Ethics Committee

12 September 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
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; and

3. Approve the amendments to the Complaints Protocol as set out in Appendix 1.

List of Appendices included: Proposed amendments to the Complaints Protocol

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 Councillor C: Essington Parish Council

South Staffordshire District Council's Standards and Resources (Hearings) Sub-Committee has held a hearing into a complaint that Cllr C of Essington Parish Council:

- (1) had failed to declare an interest in relation to his interest in Essington Independent Residents Group in breach of the DPI rules.
- (2) had breached the Parish Council's Code of Conduct in relation to Essington Independent Residents Group by failing to declare this as an "other interest".
- (3) had failed to declare that he was a Director of Wyrley Juniors Football Club Ltd either on the DPI form or at any relevant meeting in breach of the DPI rules.
- (4) had failed to declare an interest in Wyrley Juniors Football Club Ltd as an "other interest" in breach of the Code of Conduct.

The Sub Committee concluded that there had been no breach of the Code in respect of allegations (1) and (2). This was partly because Cllr C did not hold office in the Residents Group "for gain or reward" and partly because it was considered that that it would not have been reasonable or practicable in the circumstances for Cllr C to have declared his membership of Essington Independent Residents Group as it would have factored into almost everything.

Cllr C was an unremunerated director of Wyrley Juniors Football Club Ltd which was trading arm of Wyrley Juniors Football Club (a charity); he was not a trustee of the charity. The Football Club (charity) was a tenant of the Parish Council. Cllr C was, until recently, the Chairman of the Parish Council's only Committee – the Management Committee. The Management Committee dealt with the various

tenancy matters including the tenancy between the Parish Council and the Football Club. Issues relating to the Football Club were considered at all nineteen meetings that took place in 2016, 2017 and 2018. Cllr C was present at all nineteen meetings and was the Chair of the Committee at seventeen. He did not declare any interests at any of the meetings.

The Councillor's position was that he became a Director of Wyrley Juniors Football Club Ltd in 2012. He states that soon after that date he parted company with the Club and that he had believed he was no longer a Director and had been removed.

Regarding allegation (3), the Sub Committee concluded that Cllr C's directorship of Wyrley Juniors Football Ltd, was not a disclosable pecuniary interest, because:

- the tenant of the Parish Council was the Football Club, not the company of which Cllr C was a director and
- Cllr.C was not paid or remunerated in any way in connection with his position as a Non-Executive Director of Wyrley Juniors Football Club Ltd. and although his position can be regarded as an office it was not carried on for profit or gain.

The Sub Committee concluded that therefore there had been no breach.

The Sub Committee decided that whilst the decisions of the Management Committee of the Parish Council bear legally on the Football Club in practice they will have almost the same impact on Wyrley Juniors Football Club Ltd. The Sub Committee therefore found that effectively Cllr C was sitting and voting on the Committee which was managing and enforcing the lease of the Club which owned the company of which he was a Director.

The Sub Committee concluded that as at the date of the Hearing Cllr C remained a director of Wyrley Juniors Football Club Ltd. and that he had not declared an interest. The Sub Committee found that there was a clear conflict of interest arising from Cllr C's position on the Parish Council and his Directorship of Wyrley Juniors Football Club Ltd. and that this should have been declared as an "other interest" and he should not have taken part in considering any items relating to the Football Club.

The Sub Committee concluded that Cllr C had not been as open as possible about his actions. He had not promoted leadership by example nor acted in a way that preserved the confidence of others. He therefore breached the Code of Conduct.

Commentary: *this case underlines the importance of elected members being aware of their position in relation to outside bodies and ensuring that they understand what their position is and how it might conflict with their role as a councillor.*

1.2.3 Councillor H: Burnley Council

At a meeting in July 2019 the Audit and Standards Committee of Burnley Council held a hearing into a complaint that Cllr H had “liked” and responded to a misogynistic and abusive post about a local MP on his Borough and County Council Facebook account. The complainant was allowed to remain anonymous because of their concerns about how a previous complainant had been treated by the councillor.

The investigation into the complaint noted that in September 2018, the councillor had been the subject of a standards hearing after which he was required to attend social media training but had failed to attend. Cllr H had also refused to engage with the current, second investigation and did not attend the hearing. In correspondence he justified this by saying that nothing would happen as a result of the investigation.

The Hearing Panel found that the action by Cllr H on his County and Borough Councillor Facebook page in liking the language referred to in the report was inappropriate and that his management of his County and Borough Councillor Facebook page was inadequate. The Hearing Panel therefore found that Cllr H had breached the Council’s Code of Conduct for Members in relation to the Leadership Principle. It took the view that Members should promote and support General Principles of the Code of Conduct by leadership and by example and should act in a way that secures or preserves public confidence. Cllr H had behaved in a manner which could reasonably be regarded as breaching this Leadership Principle.

The sanction applied was to publish the decision and report it to full Council for information.

Commentary: Breaches of the Code of Conduct through use of social media is unfortunately commonplace. The councillor’s refusal to participate because, in part, he didn’t think anything would happen as a result, underlines the finding of the Committee on Standards in Public Life that sanctions available to local authorities are inadequate.

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 two new complaints since the date of the last Committee meeting. One complaint relates to two city councillors and is at Stage 1

in the complaints protocol. The other complaint did not relate to an elected member and so has been rejected. An earlier complaint is currently the subject of an investigation.

- 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 As reported at the last meeting of the Committee, 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. They delivered a session for Keresley Parish Council on 9 July 2019 with 5 of the 6 parish councillors able to attend.

Complaints Protocol

- 1.3.5 As part of its work on incorporating the Best Practice Recommendations of the Committee on Standards in Public Life into its own practices, the Committee agreed at its meeting in July 2019 to amend the Complaints Protocol to include a requirement to consult an Independent Person when the Monitoring Officer and Chief Executive are deciding whether to have a formal investigation into a complaint. Attached at Appendix 1 to this report is a revised Protocol which now requires the involvement of an Independent Person in all cases at Stage 1. The amendments can be found at Paragraph 4.2.

2. Options considered and recommended proposal

Members of the Committee are asked to:

1. Note the cases determined under the standards regime nationally;
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; and
3. Approve the amendments to the Complaints Protocol as set out in Appendix 1.

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 Equality and Consultation Analysis (ECA)

There are no public sector equality duties which are of relevance at this stage.

6.5 Implications for (or impact on) climate change and the environment

None

6.6 Implications for partner organisations?

None at this stage

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Suzanne Bennett	Governance Services Officer	Place	23.08.19	28.08.19
Names of approvers for submission: (officers and members)				
Finance: Graham Clark		Place	16.08.19	19.08.19
Legal: Julie Newman	City Solicitor and Monitoring Officer	Place	14.08.19	16.08.19
Barry Hastie	Director of Finance and Corporate Services	Place	16.08.19	20.08.19
Councillor Walsh	Chair of Ethics Committee		23.08.19	28.09.19

This report is published on the council's website: www.coventry.gov.uk/councilmeetings

Appendix 1

COVENTRY CITY COUNCIL

ETHICS COMMITTEE

COMPLAINTS PROTOCOL

1. INTRODUCTION

1.1 This protocol sets out how a complainant (“Complainant”) may make a complaint (“Complaint”) that an elected Councillor or co-opted member of this Council, or of a parish council within its area, (“Councillor”) has failed to comply with their council’s Code of Conduct for Councillors (“Code”).

1.2 The protocol also sets out how the Council will deal with a Complaint.

2. THE CODES OF CONDUCT

2.1 The Council has adopted a Code of Conduct for Elected and Co-opted Members, which is available on the Council’s website.

2.2 Each parish council is also required to adopt a Code of Conduct. The parish councils’ Codes are available:

- (a) on any website operated by the respective parish council;
- (b) on the City Council’s website (if we have been given a copy); or
- (c) on request from the respective parish clerk (“Clerk”).

3. MAKING A COMPLAINT

3.1 In order to ensure that we have all the information which we need to be able to process a complaint, Complaints must be submitted on the standard Complaint Form, which can be downloaded from the Council’s website.

3.2 Complaints must be sent to the Monitoring Officer (see contact details below).

3.3 If a Complaint is received other than on the standard Complaint Form, we will not consider it but we will send the Complainant a copy of the form for completion. If anyone needs assistance completing the form, they can contact the Monitoring Officer.

3.4 Complainants should give us their name and a contact address or email address, so that we can acknowledge receipt of the Complaint and keep them informed of its progress. If a Complainant wants to keep their name and address confidential, they should indicate this on the standard Complaint Form. In this case we would not disclose their name and address to the Councillor without the Complainant’s prior consent. However, the Council does not normally investigate anonymous complaints

or complaints where the Complainant wishes their details to remain confidential, unless there is a clear public interest in doing so.

- 3.5 Within 5 working days of receiving a Complaint, the Monitoring Officer will usually:
- (a) acknowledge receipt to the Complainant;
 - (b) send a copy of the Complaint to the Councillor, unless the Monitoring Officer considers that this may prejudice any investigation;
 - (c) send a copy of the Complaint to the Clerk (where the complaint relates to a parish councillor).

3.5 The Monitoring Officer will also notify the Councillor that they have the right to seek the views of the Independent Person (see paragraph 11 below). The Independent Person's contact details can be obtained from the Monitoring Officer (see contact details below).

3.6 The Monitoring Officer will keep the Complainant, the Councillor and the Clerk (where appropriate) informed of the progress of the Complaint, unless the Monitoring Officer considers that this may prejudice any investigation.

4. WILL THE COMPLAINT BE INVESTIGATED?

4.1 Where possible and appropriate, the Monitoring Officer will seek to resolve the Complaint informally, without the need for a formal investigation. Such informal resolution may involve the Councillor accepting that their conduct was unacceptable and offering an apology, or other remedial action by the Council or the respective parish council.

- 4.2 The Monitoring Officer will review every Complaint received and in conjunction with the Chief Executive, take a decision as to whether it merits formal investigation. They will have regard to, but are not bound to follow, the guidelines set out in Appendix 1. This decision will normally be taken within 15 working days of receipt of the Complaint. Before making the decision, the Monitoring Officer and Chief Executive will consult with the leader of the political group to which the Councillor belongs (if appropriate) and will also consult with the Independent Person as to whether an investigation is appropriate. The Independent Person will be given an opportunity to review and comment on allegations which the Monitoring officer and Chief Executive are minded to dismiss as being without merit, vexatious or trivial.

When the Monitoring Officer has taken a decision, they will inform the Complainant, the Councillor and the Clerk (where appropriate) of their decision and the reasons for that decision.

4.3 Where the Monitoring Officer requires additional information in order to come to a decision, they may ask the Complainant, the Councillor or the Clerk (where appropriate) for such information. Where a Complaint relates to a parish councillor, the Monitoring Officer may also seek the views of the respective parish council before deciding whether the Complaint merits formal investigation.

4.4 If the Complaint alleges criminal conduct or breach of a regulation by any person, the Monitoring Officer has the power to call in the Police and/or other regulatory

agencies. In such cases it may be necessary to postpone consideration of the Complaint until the Police or other action has been concluded.

4.5 If the Monitoring Officer decides not to investigate a Complaint, they will nevertheless report this to the next ordinary meeting of the Ethics Committee and to the relevant parish council (where appropriate) for information.

5. HOW IS AN INVESTIGATION CONDUCTED?

5.1 If the Monitoring Officer decides that a Complaint merits formal investigation, they will, where appropriate after consultation with the Independent Person, appoint an Investigating Officer who may be another senior officer of the Council, an officer of another Council or an appropriately experienced external investigator.

5.2 The Investigating Officer will decide whether they need to meet or speak to the Complainant to understand the nature of the Complaint and so that the Complainant can explain their understanding of events and suggest what documents the Investigating Officer needs to see, and who they need to interview.

5.3 The Investigating Officer would normally write to the Councillor and ask them to provide their explanation of events, and to identify what documents the Investigating Officer needs to see and who they need to interview. In exceptional cases, the Investigating Officer may delay notifying the Councillor until the investigation has progressed sufficiently.

5.4 At the end of the investigation, the Investigating Officer will produce a draft report and will send copies of that draft report, in confidence, to the Complainant and to the Councillor, to give them both an opportunity to identify any matter in that draft report with which they disagree or which they believe requires more consideration.

5.5 Having received and taken account of any comments on the draft report, the Investigating Officer will send their final report to the Monitoring Officer.

6. WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS NO EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

6.1 The Monitoring Officer will review the Investigating Officer's report. If they are satisfied that the Investigating Officer's report is sufficient, the Monitoring Officer will send a copy of the Investigating Officer's final report to the Complainant, the Councillor, the Independent Person and the clerk of the parish council (where appropriate) and notify them that they are satisfied that no further action is required. If the Monitoring Officer is not satisfied that the investigation has been conducted properly, he or she may ask the Investigating Officer to reconsider their report.

6.2 The outcome of such investigations will be reported to the next ordinary meeting of the Ethics Committee and the relevant parish council (where appropriate) for information.

7. WHAT HAPPENS IF THE INVESTIGATING OFFICER CONCLUDES THAT THERE IS EVIDENCE OF A FAILURE TO COMPLY WITH THE CODE OF CONDUCT?

7.1 The Monitoring Officer will review the Investigating Officer's report and will then either send the matter for a hearing by the Ethics Committee or, after consulting the Independent Person, seek Summary Resolution (see below).

Summary Resolution

7.2 The Monitoring Officer may consider that the matter can reasonably be resolved without the need for a hearing. In such a case, they will consult with the Independent Person and with the Complainant and seek to agree what they consider to be a fair resolution which also helps to ensure higher standards of conduct for the future. Such a resolution may include the Councillor accepting that their conduct was unacceptable and offering an apology, and/or other remedial action by the Council or the relevant parish council (where appropriate).

7.3 If the Councillor complies with the suggested resolution, the Monitoring Officer will report the matter to the Ethics Committee and the relevant parish council (where appropriate) for information, but will take no further action.

Referral for Hearing

7.4 If the Monitoring Officer considers that Summary Resolution is not appropriate, or the Councillor does not comply with any suggested resolution, then the Monitoring Officer will refer the Investigating Officer's report to the Ethics Committee for a hearing to decide whether or not the Councillor has failed to comply with the respective Code of Conduct and, if so, whether to take any action in respect of the Councillor.

Hearing Procedure

7.5 The Monitoring Officer will conduct a "pre-hearing process", requiring the Councillor to give their written response to the Investigating Officer's report, in order to identify what is likely to be agreed and what is likely to be in contention at the hearing.

7.6 The Chair of the Ethics Committee may issue directions as to the manner in which the hearing will be conducted.

7.7 The procedure for hearings is set out in Appendix 2: Hearing Procedure.

7.8 The Investigating Officer may ask the Complainant to attend the hearing to give evidence. The Complainant does not otherwise have the right to speak at the hearing but they may usually attend as a member of the public.

8. WHAT ACTION CAN THE STANDARDS COMMITTEE TAKE WHERE A COUNCILLOR HAS FAILED TO COMPLY WITH THE CODE OF CONDUCT?

8.1 The Council has delegated to the Ethics Committee such of its powers to take action in respect of individual councillors as may be necessary to promote and maintain high standards of conduct.

8.2 The sanctions available to the Ethics Committee are set out in Appendix 2: Hearing Procedure.

9. WHAT HAPPENS AFTER A HEARING?

9.1 As soon as reasonably practicable, the Monitoring Officer will prepare a formal decision notice, in consultation with the Chair, and send a copy to the Complainant, the Councillor and the clerk of the parish council (where appropriate). They will also make that decision notice available for public inspection on the Council's website for at least 12 months after the hearing.

10. WHO ARE THE ETHICS COMMITTEE?

10.1 The Ethics Committee is a committee of the City Council. It is appointed by the City Council and comprises five Councillors and must reflect the political make-up of the council.

11. WHO IS THE INDEPENDENT PERSON?

11.1 The Independent Person is a person who has been appointed by a majority of all the Councillors on the City Council.

11.2 A person cannot be the Independent Person if they:

- (a) are, or have been within the past 5 years, a Councillor, co-opted member or officer of the Borough Council;
- (b) are or have been within the past 5 years, a Councillor, co-opted member or officer of a parish or town council within the Council's area, or
- (c) are a relative, or close friend, of a person within (a) or (b) above.

11.3 In 11.2(c) above, "relative" means:

- (a) A spouse or civil partner;
- (b) Someone living with the other person as husband and wife or as if they were civil partners;
- (c) A grandparent of the other person;
- (d) A lineal descendent of a grandparent of the other person;
- (e) A parent, sibling or child of a person within sub-paragraphs 11.3(a) or (b);
- (f) A spouse or civil partner of a person within sub-paragraphs 11.3(c), (d) or (e);
or
- (g) Someone living with a person within sub-paragraphs 11.3 (c), (d) or (e) as husband and wife or as if they were civil partners.

11.4 The Independent Person is invited to attend all meetings of the Ethics Committee. Their views are sought and taken into consideration:

- (a) before the Monitoring Officer decides whether to investigate a Complaint in the circumstances set out in paragraph 4.2 above;
- (b) before the Monitoring Officer decides whether to refer an investigated Complaint for hearing or for Summary Resolution;
- (c) before the Committee takes any decision on whether the Councillor's conduct constitutes a failure to comply with the respective Code of Conduct; and

(d) as to any action to be taken following a finding of failure to comply with the respective Code of Conduct.

11.5 The Independent Person can also be consulted by the Councillor.

12. APPEALS

12.1 There is no right of appeal for the Complainant or for the Councillor against a decision of the Monitoring Officer or of the Ethics Committee.

12.2 If someone feels that the City Council has failed to deal with a Complaint properly, they may make a complaint through the Council's ordinary complaints process. This process would not re-consider the original complaint but would consider the way in which that complaint had been handled.

13 REVISION OF THESE ARRANGEMENTS

13.1 The Ethics Committee may amend these arrangements, and has delegated to the Chair of the Committee the right to depart from these arrangements where they consider that it is expedient to do so in order to secure the effective and fair consideration of any matter.

14 CONTACT DETAILS

14.1 The Council's Monitoring Officer is:

Julie Newman
Coventry City Council
Council House
Earl Street
Coventry
CV1 5RR