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Ethics Committee

5 April 2022

**Name of Cabinet Member:**

N/A- Ethics Committee

**Director Approving Submission of the report:**

Director of Law and Governance

**Ward(s) affected:**

None

**Title:** Hearing into Alleged Breach of the Code of Conduct

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**Is this a key decision?**

No

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**Executive Summary:**

This report sets out brief details of complaints made separately by three people (“the Complainants”) over related matters. The complaints are against Councillor Abdul Salam Khan (the “Subject Member”) and relate to a boundary dispute.

The Complainants have made several allegations, including that the Subject Member breached the Council’s Code of Conduct for Elected and Co-opted Members by *seeking to exert influence over officers in the Council with a view to receiving preferential treatment*.

A Stage One review of all of the complaints concluded that an independent investigator should be appointed to investigate the complaints. Rosalind Foster, a Partner with Browne Jacobson LLP Solicitors was appointed to carry out the investigation and produced a report, dated 28 February 2022.

Ms Foster concluded that one complaint did not engage the Code of Conduct and therefore this was not considered in her investigation. Ms Foster put the remaining three complaints into three categories, which were numbered *Allegations One, Two* and *Three* in her report. She found that there was no evidence on the balance of probabilities to substantiate *Allegations One* and *Three*. However she found that there is evidence to confirm that *Allegation Two* is founded on the balance of probabilities.

In accordance with Paragraph 7.4 of the Council's Complaints Protocol, the Monitoring Officer has referred all of the complaints to a hearing of the Ethics Committee for the Committee to consider.

**Recommendations:**

The Committee is requested to:

- (1) Hear the complaints against the Subject Member and determine whether he has breached the Code of Conduct in relation to any or all of the complaints;
- (2) If the Committee considers that there has been a breach or breaches of the Code of Conduct, determine what sanction or sanctions, if any, should be applied; and
- (3) Authorise the Monitoring Officer, in consultation with the Chair of Ethics Committee, to publish the Full Decision on the Council's website at the same time that copies are made available to the parties to the hearing.

**List of Appendices included:**

**Appendix 1:** Code of Conduct for Elected and Co-opted Members of Coventry City Council

**Appendix 2:** Member / Officer Protocol

**Appendix 3:** Complaints Protocol

**Appendix 4:** Stage One Report

**Appendix 5a:** Redacted Report of the Investigating Officer (pseudonymised to assign each Complainant and Witness a Coded Letter)

**Appendix 5b:** Table (explaining the pseudonymised Coded Letters in the Report at Appendix 5a)

**Appendix 5c:** Email from the Subject Member to Council Personnel, dated 30 March 2021

**Appendix 6:** Hearing Procedure

**Background papers: None**

**Other useful documents: 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: Hearing into Complaint under Code of Conduct**

### **1. Context (or background)**

- 1.1 A revised version of the Model Member Code of Conduct produced by the Local Government Association in December 2020, was adopted by the Council at the start of the Municipal Year in May 2021 and is referred to in this document as the Code of Conduct. A copy of the Code of Conduct can be found at **Appendix 1 to this Report**. The Member / Officer Protocol is attached at **Appendix 2 to this Report**. In addition, the Ethics Committee on 17 March 2017 approved a Complaints Protocol for use when dealing with Code of Conduct complaints. This was reviewed in September 2021 by the Ethics Committee who agreed that no revisions were required. A copy is attached at **Appendix 3 to this Report**.
- 1.2 In total four complaints have been made by three Complainants (the “Complainants”) against Councillor Abdul Salam Khan (the “Subject Member”) and relate to a boundary dispute.
- 1.3 The Complainants have made several allegations, including that the Subject Member breached the Council’s Code of Conduct for Elected and Co-opted Members by *seeking to exert influence over officers in the Council with a view to receiving preferential treatment*.

### **2. Stage One Decision**

- 2.1 In accordance with the Complainants Protocol, the Monitoring Officer carried out an initial review of the complaints and recommended that an independent, external officer should be appointed to investigate the complaints. Her recommendations were accepted by the Independent Person and the Chief Executive on 25 May 2021. A copy of the Stage One Report is attached at **Appendix 4 to this Report**.

### **3. Investigation into the Complaint**

- 3.1 The Monitoring Officer instructed Rosalind Foster, a Partner with Browne Jacobson LLP, to conduct an independent investigation into the complaint (“the Investigating Officer”).
- 3.2 In conducting the investigation, the Investigating Officer considered information provided by the Complainants and other witnesses, including video and photographic evidence. A number of persons were interviewed. All interviews took place via Microsoft Teams save for two which were by telephone. All interviews were recorded and transcripts produced. Each person interviewed was informed that the investigation was confidential but that anything they said in interview could be put to other interviewees and could be referred to in the report.
- 3.3 The Investigating Officer also made a wide-ranging request for information from the Council’s Planning Enforcement department.
- 3.4 The Investigating Officer issued her report on 28 February 2022.
- 3.5 The Investigating Officer concluded that one complaint did not engage the Code of Conduct. She found that the remaining three complaints did engage the Code of Conduct and fell into three categories, which were numbered *Allegations One, Two and Three* in her report. She found that there was no evidence on the balance of probabilities to substantiate *Allegations One and Three*.

3.6 The Investigating Officer found that there is evidence to confirm that *Allegation Two* is founded on the balance of probabilities.

### **3.7 Summary of *Allegations One and Three*:**

- 3.7.1 *Allegation One*: When the Police were called to the properties regarding the boundary dispute on 3 April 2021, it is alleged that the Subject Member said that he knew the Superintendent/Sergeant, would not be arrested and no action would be taken; and
- 3.7.2 *Allegation Three*: The Subject Member allegedly used his position to seek to persuade the neighbours to sell him land, on the basis that the Subject Member could secure planning permission for them in the event that they agreed to his proposal, alternatively that he would 'make life hell' for them in relation to planning if they did not
- 3.7.3 In relation to both *Allegations One* and *Three* the Investigating Officer found a lack of evidence to substantiate the allegations and therefore did not uphold the complaints made.

### **3.8 Summary of *Allegation Two*:**

- 3.8.1 *Allegation Two* is the complaint that is detailed above in this Report, namely that the Subject Member breached the Council's Code of Conduct for Elected and Co-opted Members (the Code of Conduct) by *seeking to exert influence over officers in the Council with a view to receiving preferential treatment*.
- 3.8.2 Ms Foster made the following findings in relation to *Allegation Two*:
- (a) Cllr Khan contacted various senior officers of the Council in February and March 2021 to complain about matters in relation to the boundary dispute, including one complaint made via his Personal Assistant, the sending of video evidence and complaints made to both a Director and the Chief Executive. While the Subject Member did not contact Planning Enforcement Officers directly, senior officers with management/executive responsibility for planning enforcement, were contacted during these dates to raise planning enforcement issues and with the objective of some action being taken in relation to those issues;
  - (b) The Subject Member's contact with officers culminated in an email of 30 March 2021. The audience and content of that email (which included senior planning officers and the Leader of the Council) and the fact that the Subject Member sent it from his Council email address and addressed it "Dear Colleagues" indicate that it was intended as an instruction to the officers to whom it was sent to act in the way the Subject Member directed, and was considered by the Subject Member to be a matter of which the Leader and Chief Executive of the Council should be aware. By sending that email, the Subject Member was using his position in the Council to seek to advance his own interests;
  - (c) The Subject Member's use of the phrase "*I am extremely disappointed with the involvement of my own Council*" indicates an intention to influence the recipients of the email by using proprietary and authoritarian language. In expressing disappointment, the Subject Member is signalling disapproval of the actions taken by the Planning Enforcement department to a wide audience and without having first established whether the position was as had been described by another individual;

- (d) That another individual may have contacted certain persons about the matter (including Council personnel in senior positions) does not make it right for the Subject Member to do the same. As a senior member of the Council bound by the Code, the Subject Member was in a wholly different position to the individual concerned who is a local resident.
- (e) Calling rather than emailing senior officers and asking his Personal Assistant to raise matters with the Planning Enforcement Officers does not indicate openness or transparency.

3.8.3 The Investigating Officer concluded that on the balance of probabilities the Subject Member did fail to comply with paragraphs 10 and 13 of the Council's Code of Conduct and there was evidence to suggest that the Subject Member failed to act in accordance with the Nolan principles of *Selflessness* and *Integrity*.

3.9 A redacted version of the Investigating Officer's Report is attached at **Appendix 5a to this Report**. The Investigating Officer's Report has been pseudonymised to assign each Complainant and Witness a Coded Letter. A Table explaining the pseudonymised Coded Letters in the Investigating Officer's Report is attached at **Appendix 5b to this Report**. A copy of the email referred to above, dated 30 March 2021, is attached at **Appendix 5c to this Report**.

#### **4. Response to the Investigating Officer's Report**

- 4.1 Under the Council's Complaints Protocol, all parties have an opportunity to consider the Report and make a formal response to the Investigating Officer's Report, if they so wish.
- 4.2 In this case the Complainants did not make any comment on the Investigating Officer's Report.
- 4.3 The Subject Member made the following comments:

*"It is clear from the evidence on the public planning portal that [the owner of the neighbouring property in the boundary dispute] is someone who despises the Council and Council members. He does not wish to be bound by the Planning Rules and Laws."*

The Council's Independent Person was provided with a copy of the Investigating Officer's Report and has been asked to give his views on it. The Independent Person will provide those orally at the hearing.

#### **5. Hearings Procedure**

- 5.1 The Hearing Procedure is attached at **Appendix 6 to this Report** and will be followed during the hearing into this complaint. The Chair will have the right to depart from the procedure where he or she considers it appropriate to do so.

#### **6. Options Available to the Committee**

- 6.1 At the end of the hearing, the Committee must consider whether the complaint has been upheld. The Committee may decide, on the information/representations before it that:
  - The Subject Member has not failed to comply with the Code of Conduct; or
  - The Subject Member has failed to comply with the Code of Conduct in whole or in part.

6.2 In the event that the Committee finds that the Subject Member has failed to comply with the Code of Conduct, it must consider what sanctions, if any, it should apply. The sanctions available to the Committee are to:

- (i) decide to take no action;
- (ii) publish its findings in respect of the Member's conduct;
- (iii) send a formal letter of censure to the Member;
- (iv) report its findings to the Council either for information or to recommend censure of the Member;
- (v) recommend to the Member's Group Leader that the Member be removed from any or all Committees or Sub-Committees of the Council (where applicable);
- (vi) recommend to the Leader of the Council that the Member be removed from the Cabinet, or removed from particular portfolio responsibilities (where applicable);
- (vii) recommend the Monitoring Officer to arrange training for the Member.

Any recommendation made under (v) to (vii) above will require the cooperation of all parties.

6.3 Where a Subject Member does not accept a sanction which has been imposed upon him/her by the Ethics Committee, the Monitoring Officer will submit a report to full Council which will then consider what action, if any, it should take as a result of the Subject Member's failure.

## **7. Results of consultation undertaken**

7.1 Both the Complainants and the Subject Member have been consulted at each stage of these proceedings.

## **8. Timetable for implementing this decision**

8.1 Any decisions of the Committee will be implemented within an appropriate time frame.

## **9. Comments from the Chief Operating Officer (Section 151 Officer) and the Director of Law and Governance**

9.1 Financial implications

There are no specific financial implications arising from the recommendations within this report.

9.2 Legal implications

The Council is required under Section 28 of the Localism Act 2011 to adopt a suitable Code of Conduct and to have in place arrangements under which allegations of failure to comply with the Code may be investigated and decisions on allegations can be made. The

hearing into this complaint meets this requirement and assists the Council in promoting and maintaining high standards of ethical behaviour as is required under section 27 of the Act.

## 10. Other implications

### a. How will this contribute to the Council Plan ([www.coventry.gov.uk/councilplan/](http://www.coventry.gov.uk/councilplan/))?

Not applicable

### b. How is risk being managed?

Failure to consider and deal appropriately with complaints about councillors' behaviour could lead to damage to the Council's reputation as well as that of individual councillors. The hearing into this complaint is designed to ensure that the Council discharges its duty to promote and maintain high standards of conduct.

### c. What is the impact on the organisation?

The hearing is to consider whether the behaviour of the Subject Member breached the Code of Conduct and as such will have no direct impact on the organisation. Nevertheless, the conclusions reached by the Committee may be relevant to other councillors.

## 6.2 Equalities / EIA

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

### d. Implications for (or impact on) climate change and the environment

None

### e. Implications for partner organisations?

None

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