

Report for: Standards Committee, 5 October 2021

Title: **Recent Development on Ethical Standards**

Report authorised by: Fiona Alderman – Head of Legal and Governance and Monitoring Officer

Lead Officer: **Stephen Lawrence-Orumwense – Head of Legal (Social Care and Contracts) and Deputy Monitoring Officer.**

Ward(s) affected: N/A

**Report for Key/
Non Key Decision:** Non key

1. Describe the issue under consideration

This report highlights recent developments in the ethical standards of elected official that might be of interest to members of the Standards Committee in its role of promoting and maintaining high standard of conduct.

Cabinet Member Introduction

N/A

2. Recommendations

2.1. The Committee is asked to note the report.

3. Reasons for decision

3.1 The function of the Committee includes promoting and maintain high standards of conduct by elected and co-opted members, assisting to observe the Members' Code of Conduct and advising the Council on the revision of the Code of Conduct. This report on recent developments helps to better inform the Committee in undertaking these functions.

4. Alternative options considered

4.1. There are no alternative options to considered.

5. Background information

5.1 The report reviews:

- the High Court Judgement (July 21) R (Clive Robinson) v Buckinghamshire Council quashing the decision of the Deputy Monitoring Officer that a parish councillor breached the member code of conduct <https://www.bailii.org/ew/cases/EWHC/Admin/2021/2014.html>;
- the Adjudication Panel for Wales decision (July 21) to suspend the former leader of Caerphilly County Borough Council after code of conduct breach <https://adjudicationpanel.gov.wales/sites/adjudicationpanel/files/2021-06/APW-003-2020-021-CT-cllr-poole-decision-report.pdf>;
- the Committee on Standards in Public Life (CSPL) Standards Matter 2 Findings (June 2021) at <https://www.gov.uk/government/publications/standards-matter-2-the-committees-findings>; and
- Local Government Association (LGA) Model Code of Conduct (May 2021) at <https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>) and guidance at <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>.

Buckinghamshire Case – Deputy Monitoring Officer finding of breach of Code quashed <https://www.bailii.org/ew/cases/EWHC/Admin/2021/2014.html>

5.2 A parish councillor won a High Court challenge over a decision by a Deputy Monitoring Officer (DMO) to uphold a complaint that he had breached its Code of Conduct for Members (PC Code). Farnham Royal Parish Council complained about the claimant, Cllr Clive Robinson, to South Bucks Council (now Buckinghamshire Council). The parish council accused the claimant of breaching paragraph 3.1 of their Code (not behaving in a respectful way and acting in a way that could bring the council into disrepute).

5.3 The complaints arose out of a public meeting of the parish council. The parish has a large area of Green Belt land within its boundaries. The complaint against Cllr Robinson, who had addressed the meeting from the floor, was that he had made misrepresentations about the motivation and intentions of other councillors, namely that they were minded to allow development of the Green Belt. It was also said that he had met with residents and repeated those misrepresentations, he

had refused to apologise or retract those misrepresentations and had added further claims against the clerk.

- 5.4 In the complaint the clerk to the parish council said it had decided that Cllr Robinson' actions were in breach of the PC Code by bringing the council into disrepute and failing to show respect to other councillors. The complaint also noted that as a result of a public backlash whereby the integrity of the chairman and the clerk at the meeting had been questioned. The chairman had already asked for himself to be referred to the Monitoring Officer for a determination as to whether he had been in breach of the Code of Conduct. Subsequent efforts to resolve the issue with Cllr Robinson were unsuccessful. South Bucks' Monitoring Officer wrote to the claimant in July 2018 inviting his comments. He responded by denying the allegations made against him.
- 5.5 An external solicitor was asked to assess the complaint on the papers and made recommendations in a report dated 18 February 2019. The Deputy Monitoring Officer agreed with the assessor's conclusion that Cllr Robinson had breached the Code of Conduct against five councillors and Cllr Clapp. She also agreed that there was no evidence to justify Cllr Robinson's accusations that these councillors were secretly supporting development on the Green Belt. The DMO added: "Having considered all the evidence, it appears Cllr Robinson's objective was to prove to the public that the Council and/or other councillors were not being truthful about their position regarding the green belt. I find this to be damaging to the Council especially as the Council had formally adopted a policy on the Green belt, one which Cllr Robinson had been privy to through all the stages before adoption. "Further I also find that his allegations that the Parish Council's Policy statement on the Green Belt was being used to allow development to be disrespectful and was sufficient to damage the reputation of the office of the Councillors and/or the Council." She also noted that the allegations were made in an open forum where members of the public were present. The DMO concluded that the claimant was in breach of the PC Code, but also that the complaint did not warrant a referral for investigation.
- 5.6 Cllr Robinson brought a claim for judicial review over the DMO's decision. The principal basis of the challenge (amongst others) was that the decision was in breach of section 6 of the Human Rights Act 1998 as it violated Cllr Robinson's right to freedom of expression under Article 10 of the European Convention. In the High Court Mrs Justice Lang concluded that the claim should succeed. Mrs Justice Lang found that the DMO's interpretation and/or application of Article 10 was flawed, and she failed to give effect to the claimant's enhanced right of political expression.

"94. In conclusion, I find that the DMO's interpretation and/or application of Article 10 was flawed, and she failed to give effect to the Claimant's enhanced right of political expression. In re-making the decision under

Article 10(2), I conclude that the interference did not fulfil a pressing social need, and nor was it proportionate to the aim of protecting the reputation of the other councillors. As an elected councillor, taking part in a public meeting called by the PC to discuss the Green Belt, the Claimant was entitled to the enhanced protection afforded to the expression of political opinions on matters of public interest, and the benefits of freedom of expression in a political context outweighed the need to protect the reputation of the other councillors against public criticism, notwithstanding that the criticism was found to be a misrepresentation, untruthful, and offensive. Although no further action was pursued against the Claimant, beyond recommending that he apologise, it was a violation of Article 10 to subject the Claimant to the complaints procedure, and to find him guilty of a breach of the PC Code..”.

Finding that there had been a violation of Article 10, the judge quashed the decision.

Deputy Monitoring Officer comment

5.7 Monitoring Officers and their Deputies and Members of Standards Committee in making determinations on whether there has been a breach of the Code must always be mindful of the protection afforded by Article 10.

Caerphilly County Borough Council – Former council leader suspended after code of conduct breach
<https://adjudicationpanel.gov.wales/sites/adjudicationpanel/files/2021-06/APW-003-2020-021-CT-cllr-poole-decision-report.pdf>

5.8 The former leader of Caerphilly County Borough Council was suspended for five months for using confidential information to buy shares. Cllr David Poole was found to have breached the councillors’ code of conduct by the Adjudication Panel for Wales (APW). Cllr Poole resigned as leader in September 2019.

5.9 Part of Cllr Poole’s duties was to represent Caerphilly on the board of the Cardiff Capital Region City Deal. In the course of this he became aware that councils in the area wished to support the construction of a semiconductor factory in which a company named IQE would be involved. A confidential report made predictions about IQE’s profitability. The project attracted a £38m grant from the city deal and the Welsh Government to transform a disused building in Newport.

5.10 A few days after the city region board considered the matter Cllr Poole bought shares worth £2,034.55 in IQE. The APW said that in January 2019, Cllr Poole

tried to amend his register of interests entry to include the IQE shares but “following advice from the monitoring officer, no amendment was made. “He was advised that, because of the level of his shareholding and the fact that the business was based outside the council’s area, it was not necessary to make any amendment.”

- 5.11 Cllr Poole in January 2019 reinvested his dividends by buying further IQE shares worth £1111.57, and another £1111.33 that May. He sold the shares in September 2019 and referred himself to the Public Services Ombudsman, noting “..with the benefit of hindsight, by purchasing shares in IQE, I was preventing myself becoming involved in any decisions of CCR around IQE and the hoped for wider compound semiconductor industry growth in the area”.
- 5.12 The APW found in mitigation that Cllr Poole had not previously breached the code and that he did seek to register an interest in IQE in January 2019, “but failed to do so as a result of the monitoring officer’s advice”. It also found that Cllr Poole had not tried to influence decisions concerning IQE at a February 2019 meeting and left later meetings at which it was discussed. There were though a number of aggravating factors. These included his influential position as leader, that he had used confidential, price sensitive information to attempt to secure a personal advantage and had “shown no real insight into his wrongdoing and/or acceptance of guilt” and had in the latter stages of the process failed to engage with the APW.
- 5.13 Cllr Poole was found to be in breach of Paragraphs 6 (1)(a) (“*not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;*”); 7(a) (not “*..use or attempt to use your position improperly to confer on all secure for yourself.. an advantage...*”); 11 (1); (“*Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest is apparent.*”); and 14 (1)(a) (“*...., where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority’s standards committee- (a) withdraw from the room, chamber or place where a meeting considering business is being held..*”). He was suspended as a councillor for five months and for two months.
- 5.14 APW recommended that “That the Monitoring Officer re-emphasises the requirement for members to register interests as/when they arise and that the duty does not arise annually.”

Deputy Monitoring Officer comment

5.15 This case is another reminder of the need for Councillors to always heed and act on the Nolan principle of selflessness (serving public interest and not to improperly confer an advantage) and integrity.

Committee on Standards in Public Life (CSPL) Standards Matter 2 Findings **<https://www.gov.uk/government/publications/standards-matter-2-the-committees-findings>**;

5.16 In September 2020, CSPL launched the *Standards Matter 2* review to evaluate the strengths and weaknesses of the institutions, policies and processes that implement ethical standards in Westminster and beyond. CSPL received evidence from various stakeholders. Although the CSPL final report is yet to be published, it felt that publishing its findings now will help contribute to the current debate about standards in government that is the subject of parliamentary and government inquiries. CSPL have found four areas of standards regulation that require significant reform: the Ministerial Code and the Independent Adviser on Ministers' Interests, the business appointment rules and the Advisory Committee on Business Appointments (ACOBA), transparency around lobbying, and the regulation of public appointments. The findings on the Ministerial Code provides that:

- “● The Ministerial Code should be issued by the Prime Minister.
- There should be a range of graduated sanctions for breaches of the Ministerial Code, and the issuing of those sanctions should be a matter solely for the Prime Minister.
- The Independent Adviser should be able to initiate investigations, determine findings of breaches, and a summary of their findings should be published in a timely manner.”

5.17 These findings are essentially for the Prime Minister and his Cabinet and Senior Civil Servants. However, there may be some learning for local authorities such as Haringey. As to the ministerial code, there is no guidance issued by the Leader on the standards expected of cabinet members. Do we need one and is the Members Code of Conduct and the Members Officer Protocol sufficient? How would any such guidance sit alongside the Member Code of Conduct and how would any breach be dealt with? For now, there are no pressing concerns that requires a similar code for local authorities' cabinet members. The Member Code is sufficient.

Local Government Association (LGA) Model Code of Conduct (May 2021) at **<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>** and guidance at

<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>;

- 5.18 The Local Government Association (LGA) has developed a Model Councillor Code of Conduct, in association with key partners and after extensive consultation with the sector. The model Code is a template for councils to adopt in whole and/or with local amendments. It states “The purpose of this Code of Conduct is to assist you, as a councillor, in modelling the behaviour that is expected of you, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken against you. It is also to protect you, the public, fellow councillors, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and your specific obligations in relation to standards of conduct...”
- 5.19 The Code is very similar to the Council’s Member Code of Conduct but does contain more explanation of the standard of behaviour expected of councillors. For example, the Council’s Code states that at 3.1 “You must treat others with respect” The LGA Codes states that

“As a councillor:

1.1 I treat other councillors and members of the public with respect.

1.2 I treat local authority employees, employees and representatives of partner organisations and those volunteering for the local authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack. In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public’s expectations and confidence in councillors. In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police..”

- 5.20 There are certain new obligations such as an obligation to attend training and reference to social media. Similar to the Council’s Code, the LGA Code include provisions relating to registration and disclosure of interest.

- 5.21 In addition to the Code, there is supporting guidance at <https://www.local.gov.uk/publications/guidance-local-government-association->

[model-councillor-code-conduct](#) to help with understanding and consistency of approach. The guidance is extensive and will assist elected and nonelected members to have a better grasp of the context and scope of the obligations under the Code and what is generally permissive conduct. It will also be of use to complainants in understanding conduct that is considered acceptable by elected members.

6. Contribution to strategic outcomes

6.1. The update supports the governance of the Council and its decision-making, thereby assisting the Council to meet its strategic outcomes.

7. Statutory Officers comments (Chief Finance Officer (including procurement), Head of Legal and Governance , Equalities)

Finance

7.1. None

Procurement

7.2. None.

Legal

7.3. By virtue of section 27 of the Localism Act 2011, the Council is required to promote and maintain high standards of conduct by members and co-opted members and to adopt a Code of Conduct. The updates above serve to inform the Council in the discharge of its responsibility.

Equality

7.4. None.

8. Use of Appendices

8.1. None

9. Background information Local Government (Access to Information) Act 1985

The High Court Judgement (July 21) R (Clive Robinson) v Buckinghamshire Council <https://www.bailii.org/ew/cases/EWHC/Admin/2021/2014.html>;

The Adjudication Panel for Wales decision (July 21)
<https://adjudicationpanel.gov.wales/sites/adjudicationpanel/files/2021-06/APW-003-2020-021-CT-cllr-poole-decision-report.pdf>

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<https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>) and guidance at
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