

**Application of the Council Code of Conduct to Elected Members**

**Summary of report:**

The report is to provide information to Elected Members in respect of a query that arose at Standards Committee on the 30<sup>th</sup> January 2017 in respect of when the code of conduct applies to Elected Members.

**Background papers:**

Appendix 1 - Redacted Review of complaint to be provided at the Meeting

**Recommendation:**

To note the content of the report and Appendices

**1.0 Background**

- 1.1 The report is to provide information to Elected Members in respect of a query that arose at Standards Committee on the 30<sup>th</sup> January 2017 in respect of when the code of conduct applies to Elected Members.
- 1.2 The law is quite clear in this regard. S27 (2) Localism Act 2011, "In discharging its duty under subsection (1), a relevant authority must, in particular adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity." The primary legislation in essence confirmed the court's decision in *Livingstone v Adjudication Panel for England* [2006] LGR 799 at [29] Mr. Justice Collins J said that 'official capacity will include anything done in dealing with staff, when representing the council, in dealing with constituents' problems and so on', in essence performing the functions of a councillor.
- 1.3 This stance was supported in *Mullaney v The Adjudication Panel for England* [2009] EWHC 72 (Admin) Charles J. Which was a case that was reported in 2010 and is interesting because it considered the point about when an elected member may be considered as acting in their official capacity at the material time it was alleged a breach of code conduct occurred. This is a matter that needs to be considered every time a complaint is submitted regarding elected member conduct and is sometimes not as clear as one would suppose it should be. It can be fact specific and needs to be determined in every case where a review is conducted.
- 1.4 In the *Mullaney* case the court discussed the issue of official capacity in the above case looking at it in simple and objective terms. "The words official capacity and its definition, namely, "conducts business of the office to which he has been elected or appointed" were ordinary descriptive English words. Their application was inevitably fact sensitive and so whether or not a person was so acting inevitably called for an informed judgement by reference to the facts of a

given case. It also meant that there was the potential for two decision makers, both taking the correct approach, to reach different decisions.” Official capacity would include anything done in dealing with staff, when representing the Council or in dealing with constituent’s problems and so on. In essence this will mainly be determined on the actual facts of the case itself. In the case of Mullaney the councillor described himself as a councillor by making, “councillor enquiries”, due to his membership of the planning committee, his legitimate and keen interest in the building as a councillor (who is interested in planning matters) and the identification of himself as a councillor on the video and in its publication.

## **2.0 Resource and legal considerations:**

2.1 None directly related to this report. The legal issues are described in the body of the report.

## **3.0 Performance and Risk Management issues:**

3.1 Performance and risk management is a feature of all Council functions. It is important that elected members understand how the code of conduct is applied in relation to their roles where there is a complaint.

## **4.0 Equality Implications:**

4.1 In maintaining up to date policies and procedures the Council will ensure that services are delivered fairly in an open and transparent manner. There are specific requirements in both codes that elected members and officers observe equalities.

## **5.0 Consultation:**

5.1 Not applicable to this report

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