

## For General Release

<b>REPORT TO:</b>	<b>ETHICS COMMITTEE</b> <b>25<sup>th</sup> February 2014</b>
<b>AGENDA ITEM NO:</b>	<b>7</b>
<b>SUBJECT:</b>	<b>UPDATE FOLLOWING RECENT JUDICIAL DECISION ON BREACH OF THE CODE OF CONDUCT BY AN EALING COUNCILLOR</b>
<b>LEAD OFFICER:</b>	<b>COUNCIL SOLICITOR, DIRECTOR OF DEMOCRATIC AND LEGAL SERVICES &amp; MONITORING OFFICER</b>
<b>WARDS:</b>	<b>ALL</b>
<b>CORPORATE PRIORITY/POLICY CONTEXT:</b> The Council has determined that the Ethics Committee shall be responsible for receiving reports from the Monitoring Officer on matters of probity and ethics for consideration.	
<b>FINANCIAL IMPACT</b> Implementation of the recommendations contained in this report shall be contained within existing budgets	
<b>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A</b>	

### 1. RECOMMENDATION

The Committee is asked to:

- 1.1 Consider, note and endorse the contents of the report

### 2. EXECUTIVE SUMMARY

- 2.1 The report provides an update to Members following the recent judicial decision regarding a dispute which arose between a Councillor and his authority following the local authority standards committee finding that the Member had failed to comply with the Code of Conduct.
- 2.2 In summary the finding of the Court was that the Council's standards committee was entitled to find that comments posted by a councillor on a blog, about the Indian community in a particular area, had failed to treat others with respect, had brought the office of councillor into disrepute and had amounted to a breach of its Code of conduct. Although the findings and the sanctions imposed constituted a breach of the European Convention on Human Rights 1950 Article 10, which was the basis of the Councillors' challenge the findings and sanctions were justified, they were justified under Article 10(2) of the Convention.

### 3. DETAIL

- 3.1 The claimant councillor (Cllr Dennehy) applied for judicial review of a decision of Ealing Standards Committee that he had breached the rules of its Code of conduct for councillors.
- 3.2 Cllr Dennehy had posted comments on the "news" section of a blog that he maintained and which were widely reported in the local press. A petition was signed by some 280 people condemning Cllr Dennehy's comments about the Indian community in Southall, and highlighting in particular his description of criminality as being endemic there, and his accusation that the Indian community was exploiting immigrants. A formal complaint was made to the local authority alleging a breach of the Code of conduct for councillors. A report was prepared which concluded that, although the issues highlighted by Cllr Dennehy were legitimate matters of debate, the blog could be seen as inappropriately derogatory about a whole section of a community, showed lack of respect and brought the local authority and his role as a councillor into disrepute, contrary to the Code.
- 3.3 The Ealing Code of Conduct contains the following provisions which formed part of the erstwhile Model Code of Conduct which was abolished by the Localism Act, namely:
- "2(1) Subject to subparagraphs (2) to (5) you must comply with this Code whenever you-*  
*(a) conduct the business of the council (which, in this Code, includes the business of the office to which you are elected or appointed); or*  
*(b) act, claim to act or give the impression you are acting as a representative of the council,*  
*and references to your official capacity are construed accordingly.*  
*(2) subject to subparagraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.*  
*3 (1) you must treat others with respect*  
*5 you must not conduct yourself in a manner which could reasonably be regarded as bringing your office or your council into disrepute"*
- 3.4 Members will be aware that Croydon adopted a light touch code which does not have the same wording as that which is in the Ealing Code set out above.
- 3.5 The matter was set down for hearing before a standards committee, which Cllr Dennehy chose not to attend. Having considered the report and other evidence, the committee agreed with the report's findings that Cllr Dennehy had breached the Code, and concluded that the tone and much of the blog's content had been inappropriate and unnecessarily provocative. It resolved that Cllr Dennehy should issue an appropriate apology, and that a note summarising its decision should be published in the local gazette and on the local authority website.
- 3.6 Cllr Dennehy submitted that the committee (1) failed to give adequate reasons for concluding that the tone and much of the content of the blog had been

inappropriate and unnecessarily provocative; (2) erred in failing to have regard to his protected rights under the European Convention on Human Rights 1950 article 10.

3.7 Article 10 relates to Freedom of Expression and provides as follows:

*“(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent states from requiring the licensing of broadcasting, television or cinema enterprises.*

*(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interest of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”*

3.8 The Court in reaching its decision held that:

3.8.1 Cllr Dennehy had been given adequate reasons. The committee found that Cllr Dennehy had breached the Code and there could be no doubt that the reasons were given both in the minutes of the committee meeting and through a letter sent to him the following day. The only issue was therefore whether the reasons were adequate and this determination depended on the context and the nature of the decision. The adequacy of the reasons also had to be assessed from the standpoint of an informed audience. Seen in context and from the standpoint of an informed audience, the reasons given were clearly adequate. Cllr Dennehy was well aware of the contents of the report to the standards committee hearing and had provided considerable input. The Court stated that it was plain that the committee accepted the distinction drawn in the report between the fact that on the one hand the blog raised a number of important and legitimate issues for debate, and on the other that the tone of much of the content had been inappropriate and unnecessarily provocative.

3.8.2 The report to the Standards Committee made specific reference to Article 10 and the relevant case law and the clear indication was that the committee had duly considered it and the guidance to its interpretation when considering whether Article 10 was engaged and if so, whether the interference in terms of the sanctions proposed was justified.

3.8.3 The Court held that the committee was entitled to find that what Cllr Dennehy had said about Southall residents had failed to treat others with respect and had brought the office of councillor into disrepute; on the face of it the finding and the sanctions constituted a breach of Article 10, but were justified under Article 10(2) as they were proportionate. The

comments about Southall residents were contained in a separate section of the blog from those which raised legitimate topics of legitimate debate. The comments were not an expression of a political view, but an unjustified personal and generic attack on a section of the public.

#### **4. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS**

4.1 There are no direct financial or other implications arising from this report.

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**BACKGROUND DOCUMENTS:**

None