

<b>Report of:</b>	<i>James Bromiley, Strategic Director of Finance Governance and Support</i>
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**AGENDA ITEM 6**

<b>Submitted to:</b>	<i>Standards Committee – 11 October 2018</i>
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<b>Subject:</b>	<i>Standards – Codes of Conduct Update</i>
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**Summary**

<b>Proposed decision(s)</b>	
I.	The Committee considers the application/revision of communication plans, including communication in a private capacity;
II.	The Committee considers the failure to respond/adhere Standards (Hearings) Sub-Committee sanctions and whether any further actions are required; and
III.	The Committee considers the offer that Members and Officers be offered the opportunity to take part in independent external mediation; and
IV.	The Committee delegates authority to the Monitoring Officer, in consultation with the Head of Paid Service, to make further revisions i.e. to remove plans, ease restrictions or change the administration/filtering route of the communication plans should they be deemed necessary.

<b>Report for:</b>	<b>Key decision:</b>	<b>Confidential:</b>	<b>Is the report urgent?</b>
Decision	N/A	No	N/NA

<b>Contribution to delivery of the 2018-22 Strategic Plan</b>		
<b>Business Imperatives</b>	<b>Physical Regeneration</b>	<b>Social Regeneration</b>
Members conducting themselves in accordance with acceptable standards is a cornerstone of the smooth operation of the Council.	No impact	No impact

<b>Ward(s) affected</b>
N/A

## What is the purpose of this report?

1. This report is not a rehearing of previous standards matters; rather, it constitutes a periodic review to consider the application of previously-imposed sanctions in relation to previous findings, to consider any amendments required to those sanctions and communication plans imposed on the relevant members, together with associated standards matters.

## Why does this report require a Member decision?

2. The Standards Committee have the delegated authority to consider Members' Code of Conduct issues.

## Background

3. In February and March 2018 the Standards (Hearings) Sub-Committee considered two separate 'Code of Conduct' investigation reports against Councillors Lawton and Rathmell.
4. Both Councillors were found to have breached the Code of Conduct by the Standards (Hearings) Sub-Committee and each were given a number of sanctions and placed on a communication plan.
5. This reports provides an update to the Standards Committee on the application of the communication plans, the appropriate Councillors' compliance with the sanctions imposed and seeks views of the Committee on whether any further actions are required.

## Councillor Lawton

6. The minutes of the meeting in relation to Councillor Lawton state:

*"Having considered the Investigating Officer's report, the supporting documentation, the Investigating Officer's comments and questioning, the Sub Committee considered the findings of fact, and based on those findings, whether Councillor Lawton had failed to comply with the Members' Code of Conduct.*

*In regard to the allegations, the Sub Committee unanimously supported the findings of the Investigating Officer's Report.*

*It was **ORDERED** that the following sanctions be imposed:*

1. *Councillor Lawton to be Censured and this Censure to be made in public.*
2. *Councillor Lawton and the Officers who had made the complaints referred to in the Investigating Officer's report to be invited to attend mediation.*
3. *In addition, Councillor Lawton was required to write to all persons named in the Investigating Officer's Report dated 23 January 2018, with an apology for his conduct, produced in such a way that it could be made public.*
4. *Councillor Lawton would not be entitled receive any Council documents which were deemed Confidential, forthwith.*

5. *Councillor Lawton was required to undertake training in relation to the Data Protection Act 1988.*
6. *The following sanctions imposed at the Standards (Hearings) Sub Committee held at 9.30 am on 20 July 2017 to remain in force as follows:*
  - *Councillor Lawton would retain his Council IT equipment but email access would be limited to the Onestop to prevent abuse;*
  - *Email access would be restored at such a point in time as Councillor Lawton wrote to all persons named in the Investigating Officer's Report with an apology for his conduct, produced in such a way that it could be made public;*
  - *Social media access through Councillor Lawton's Council IT equipment would be disabled;*
  - *Whether through Onestop or otherwise, email communications from Councillor Lawton which sought to deal with matters that had already received a response would be filed without action and emails raising wholly new issues would be forwarded to Officers for action;*
  - *Councillor Lawton was required to undertake training in relation to the Code of Conduct, use of appropriate challenge and social media usage."*
7. Sanctions 1 and 4 have been completed. In relation to sanction 2, an invitation to attend mediation has been issued, and Councillor Lawton has expressed a willingness to participate; this has yet to be arranged.
8. This leaves sanctions 3 and 5, and the second and fifth bullet points set out in sanction 6, which require positive action from Councillor Lawton. To date these have not been complied with.
9. At this point in time, Councillor Lawton's communication plan has had the desired effect for internal communications, although the use of social media is still a concern.

#### Councillor Rathmell

10. The draft minutes of the meeting in relation to Councillor Rathmell state:

*"Having considered the Investigating Officer's report, the supporting documentation, the Investigating Officer's comments and questioning, the Sub Committee considered the findings of fact, and based on those findings, whether Councillor Rathmell had failed to comply with the Members' Code of Conduct.*

*In regard to the allegations, the Sub Committee unanimously supported the findings of the Investigating Officer's Report. The Committee concluded that Councillor Rathmell had breached the Members' Code of Conduct in respect of five of the complaints. A sixth complaint was dismissed.*

*It was **ORDERED** that the following sanctions be imposed:*

1. *That within a period of 4 weeks Councillor Rathmell issues a written apology to the Officers named in the report.*

2. *Failure to action the above will result in a public censure.*
3. *Training to be undertaken by Councillor Rathmell in:*
  - a. *Data Protection*
  - b. *Social Media (appropriate use)*
4. *Councillor Rathmell's communication plan to be reviewed to enable access to Council IT systems and equipment, allowing access to Council information, in Egenda, receive/send emails etc. However, all communications with the Council would be managed as is at present in order to maintain the protection of staff and all communications would still be via the Onestop/Chief Executive. The Chief Executive/Monitoring Officer to be delegated the power to consider the effectiveness of the revised the communication plan in 6 months.*
5. *The Standards (Hearing) Sub-Committee recommended Councillor Rathmell, and the Officers named in the report, be invited to participate in mediation to break the cycle of distrust and restore a respectful working relationship. This would be facilitated by an external organisation."*

11. The Communication Plan referred to above comprises the following:

- *"No member of staff will engage in any meetings with you, save for those formal Council meetings which demand an officer be present.*
- *No member of staff will engage in any telephone conversation with you.*
- *You must refrain from entering office spaces which house staff, or from approaching them. Your co tag access will be restricted to enforce this.*
- *Any attempts to circumvent these arrangements by yourself to be further evidence of your disregard and disrespect staff that may result in further consideration of this plan.*
- *All communications from you will be in writing or via email and will be filtered through the onestop.*
- *Attempts will be made to respond to written correspondence within 28 days of receipt.*
- *All communications will be assessed by the Chief Executive to determine one of the following courses of actions:*
  - *Where the communication is a legitimate service enquiry/request the Chief Executive will liaise with the appropriate service director and provide a response electronically through the onestop system.*
  - *Where communication is in anyway disrespectful of officers or an issue previously responded to, a standard response will be issued to you via the onestop and no response will be provided to the issue/s raised.*
  - *Where the communication is a legitimate enquiry regarding a matter which officers should reply, the Chief Executive will liaise with those officers and provide a response through the onestop system or hard copy.*

- *Where the communication is an issue that falls within the remit of the Monitoring Officer or 151 Officer, they will be requested to provide a response to the Chief Executive and a response provided through the onestop system or in hard copy.*

*The Chief Executive will attempt to respond within 28 days of receipt, although this of course will be dependent on the volume and complexity of the enquiries made.”*

12. To date, only Sanction 2 has been completed, following the failure of Councillor Rathmell to adhere to the requirements of Sanction 1. Despite opportunities being made available to comply with the others, they remain outstanding, and Councillor Rathmell’s behaviour, although somewhat modified, continues in a similar vein to that previously seen.
13. The Councillor has reported that he does not receive Council papers on time and does not receive all of the general information other Councillors receive. However in accordance with sanction 4, Councillor Rathmell has, on a number of occasions, been offered access to Council IT systems to allow him to receive and submit electronic communications and access Council papers etc. However those offers have been declined. Councillor Rathmell also insists that the Council desist from contacting him via the personal email account with which he previously contacted the Council.
14. Consequently, all communications from the Council are via hard copy and as such there is an inherent delay in receiving information or a risk that some information isn’t printed off (although the Council’s meeting diary and open Council papers can still be accessed through the Council’s website).
15. Following the imposition of the sanctions by the Committee, Councillor Rathmell continued to fail to adhere to the communication plan, by seeking to call Officers via telephone, and by accessing Council office spaces. As a result, steps were taken to block such access through the Council’s telephony/co tag system. Notwithstanding this, Councillor Rathmell continues to telephone, and continues to access restricted areas of Council buildings.
16. Councillor Rathmell subsequently raised concerns with the Deputy Monitoring Officer that this action had impacted on him personally as a member of the public in that he could not contact the Council in relation to personal issues, and further that it was inappropriate for the Chief Executive to have sight of any personal issues raised. As Members are aware, in addition to their ‘public’ life Members are entitled to a private life; contact made with the Council in that latter context is subject to the same conventions as for any other member of the public; it should also be noted, however, that differentiating between ‘public’ and ‘private’ contact from Members can be challenging.
17. As a result of a service review the Council is also reviewing the administration of the Member casework processes, and it proposed that current systems used to support all Members casework will be used to manage Councillor related requests. Councillor communications will continue to be routed through the Onestop (until the review is complete). However, it is proposed that they will be filtered by the Information and Governance Manager and not the Chief Executive. It is proposed that the block on telephone contact be removed to allow contact in relation to personal matters, however staff that do receive calls in relation to Council/Councillor business should direct the Councillor to the appropriate route. It is suggested that the remainder of the

communication plan remains in place and that the Monitoring Officer in conjunction with the Head of Paid service be delegated authority to review the communication plans i.e. to remove plans, ease restrictions or change the administration/filtering route for the management of communications as and when necessary, but not less than every six months.

18. In order to avoid any confusion, It recommended that should Councillor Rathmell (or any other Councillor) wish to contact the Council in relation to personal matters or their home address that they should use the general public access route i.e. via a walk-in visit; telephone (01642 726001), or through a personal My Middlesbrough Account. It is anticipated that, should Councillor Rathmell utilise the latter option, the Council will respond to the email account provided.

### **Other Matters**

19. It should also be recognised that relations between the Member concerned and Officers still remain an issue, and this was most recently referenced in the updated Audit Results Report. It is therefore recommended that independent external mediation is offered between both parties, although a precondition of such mediation must be the cessation of the behaviour for which Councillors have been sanctioned.

### **What decision(s) are being asked for?**

- I. The Committee agrees the continuation application/revision of communication plans, including communication in a private capacity, as recommended at paragraph 17 above.
- II. The Committee notes the continuing failure of both Councillors to respond/adhere to sanctions previously imposed, and determines whether any further actions are required;
- III. The Committee considers the offer that Members and Officers be offered the opportunity to take part in independent external mediation, subject to the precondition noted at paragraph 19; and
- IV. The Committee delegates authority to the Monitoring Officer, in consultation with the Head of Paid Service, to make further revisions i.e. to remove plans, ease restrictions or change the administration/filtering route of the communication plans should they be deemed necessary, without further reference to the Committee.

### **Why is this being recommended?**

20. In order to ensure sanctions remain appropriate and implementable, in light of prevailing circumstances and previous adherence to sanctions. The delegation of authority is sought to ensure administrative reviews in the future can be conducted in the most expeditious manner.

### **Other potential decisions and why these have not been recommended**

21. As an alternative to the recommended actions, the Committee could choose to take no action in relation to the current sanctions and communication plan. This would fail to recognise the prevailing circumstances (including continued behaviour contrary to the Code of Conduct, and failure to adhere to sanctions).

## **Impact(s) of recommended decision(s)**

### ***Legal***

22. The continued review of sanctions and the operation of the communication plan ensures the requirements of natural justice are observed.

### ***Financial***

23. There are no financial implications of the decisions.

### ***Policy Framework***

24. The decisions are in accordance with the Members' Code of Conduct and associated procedure.

### ***Equality and Diversity***

25. There is no impact on equality and diversity.

### ***Risk***

26. Failure to review the sanctions and communication plans may result in the inappropriate use of officer time, and may increase the risk of a challenge under human rights legislation. Poor behaviour of Members also leaves the Council open to adverse publicity that may also impact on the health and wellbeing of staff.

## **Actions to be taken to implement the decision(s)**

27. In order to implement the decisions:

- I. Any revisions to the communication plan will be communicated to the Councillors concerned;
- II. Any additional sanctions will be communicated to Councillors Lawton and Rathmell;
- III. The Monitoring Officer arranges for blocks to telephone access be removed to allow contact for personal matters only.
- IV. Subject to the precondition noted at paragraph 19, the offer of mediation will be communicated to Councillors Lawton and Rathmell; and
- V. The delegation will be noted in the Scheme of Delegation.

## **Appendices**

28. There are no appendices to this report.

## **Background papers**

29. No background papers were used in the preparation of this report.

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