

REVIEW OF MEMBERS' CODE OF CONDUCT

REPORT OF THE ASSISTANT DIRECTOR OF LAW AND GOVERNANCE

1. Introduction

- 1.1 The purpose of this report is to invite the Committee to review the current Code of Conduct and consider whether it wishes to propose any amendments. Any amendments will be referred to Council for approval.
- 1.2 The Arrangements for Dealing with Complaints will be brought to a future meeting of the Committee for review.

2. Background

- 2.1 The Code was last updated in 2020, in order to incorporate a reference to adopting the International Holocaust Remembrance Alliance working definition of anti-semitism. Since then, the LGA has published a suggested Model Code which members may wish to consider.
- 2.2 It is for the Council to determine its own Code of Conduct. There is no obligation to adopt the LGA Model Code, although the Council may do so if it wishes. Alternatively, the Council may adopt the LGA Model Code with "local" modifications, or it may simply consider the terms of the Model Code and make such changes as it considers appropriate to its existing Code. The Council may also determine that no amendments to the Council's Code should be made at this time.
- 2.3 The Council's existing Code of Conduct is attached at Appendix 1 to this report and the LGA Model Code is shown at Appendix 2. Suggested amendments to the Council's Code for the Committee's consideration are shown as tracked changes at Appendix 3, should the Committee decide that its preferred approach is to amend the existing Code.

3. LGA Model Code of Conduct

- 3.1 The style of the LGA Model Code is somewhat different to the Council's Code of Conduct. The Council's Code is expressed in the second person, including requirements that "You must..." "You must not..." etc. Any guidance on the application and interpretation of those provisions is provided in supplementary documents such as e-mails or briefing notes, generally sent by the Monitoring Officer, which do not form part of the Code of Conduct.
- 3.2 The LGA Model Code is expressed in a mixture of first person obligations in bold type as "**I will...**" "**I do not...**" etc. which are supplemented by guidance on the application and interpretation of the

obligations, which is expressed in the second person and built into the Code itself. On this basis, any updates or amendments to the associated guidance would also need to be approved by Council, as they would amount to an amendment to the Code itself.

- 3.3 In respect of the “General Conduct” obligations in the LGA Model Code, the following observations are made:

3.3.1 Respect

3.3.1.1 Both the LGA Model Code and the Council’s Code include provisions regarding treating others with respect. Whereas the Council’s Code states that this includes Council officers and members, the LGA also expressly refers to members of the public, then goes on to refer to employees and representatives of partner organisations and those volunteering for the local authority. It is not entirely clear what group of people would fall within the category of “volunteering for the local authority” as opposed to volunteering more generally.

3.3.1.2 Members may wish to consider whether specifically identifying additional categories of persons to whom respect should be shown would add any value to the current provisions in the Council’s Code, or whether the current provisions are sufficient to convey the importance of treating all persons with respect.

3.3.2 Bullying, harassment and discrimination

3.3.2.1 The Council’s Code includes provision in respect of bullying. Harassment is not expressly referred to, nor is there express reference to equalities and non-discrimination.

3.3.2.2 Suggested amendments to cover these areas are shown as tracked changes at Appendix 3.

3.3.3 Impartiality of officers of the Council

3.3.3.1 The provisions in the Model Code and Council’s Code are in similar terms.

3.3.4 Confidentiality and Access to Information

3.3.4.1 While much of the suggested provision in the Model Code is in similar terms to the Council’s Code, the Model Code contains an additional requirement that where a member is proposing to disclose information of a confidential nature, as well as the disclosure being reasonable and in the public interest, made in good faith and in compliance with the reasonable requirements of the authority, the member should also have consulted the Monitoring Officer prior to its release.

3.3.4.2 It is recommended that members include this additional provision in the Council’s Code of Conduct. The provision does not require

the member concerned to accept the advice of the Monitoring Officer (although if they act contrary to that advice, it is to be expected that they would be more likely to be in breach of the Code) however including this provision may help serve as a reminder to members of the importance of using proper channels and appropriate procedures when they genuinely have concerns about matters which they believe should be disclosed. Consulting the Monitoring officer would provide an opportunity for the member to be briefed regarding whether there were other more appropriate methods of raising any concern they may have.

3.3.4.3 The Model Code also includes a provision that a member should not improperly use information they have gained as a result of their role as a councillor to advance themselves, other persons connected with them, or their business interests.

3.3.4.4 It is recommended that a similar provision be included in the Council's Code, in the interests of public confidence that members are acting to serve the wider public interest, rather than those of themselves or their associates. Appropriate amendments are suggested at Appendix 3.

3.3.5 Disrepute

3.3.5.1 The Model Code provision is that a member does not bring their role or local authority into disrepute, which arguably suggests that for a breach of this provision to be established, it is necessary to demonstrate that either the member's role or the Council was, in fact, brought into disrepute. The provision in the Council's Code is that a member should not conduct themselves in a manner which could "reasonably be regarded" as bringing the Council, or their office as member, into disrepute. It is suggested that the Council's version is to be preferred.

3.3.6 Use of Position

3.3.6.1 A similar provision is included in the Council's Code of Conduct, which it is suggested should be enhanced, as referred to in paragraphs 3.3.4.3 and 3.3.4.4 of this report.

3.3.7 Use of Local Authority Resources and Facilities

3.3.7.1 A similar provision is included in the Council's Code of Conduct.

3.3.8 Complying with the Code of Conduct

3.3.8.1 The Council's Code contains a similar provision to that at 8.3 of the LGA Model Code, which prohibits intimidation or attempted intimidation of a person who is involved with the administration of, or the investigation of, a complaint. There are however additional provisions in the Model Code to undertake

Code of Conduct training, co-operate with any Code of Conduct investigation or determination and to comply with any sanction imposed following a breach.

3.3.8.2 Members may wish to consider including provisions in the Code to require co-operation with investigations and sanctions imposed. It should be relatively clear when a member is failing to comply with an ongoing process or to comply with a sanction imposed.

3.3.8.3 While it is important that members attend relevant training on the Code of Conduct, a Code obligation to undertake training may raise issues in respect of what level of “failure to attend” amounts to a breach. For example, how many training opportunities would need to be missed before a potential breach arose? Nevertheless, despite any potential difficulties in identifying the circumstances that may amount to a breach, members may consider that these are not unsurmountable and that if an allegation was made, account would be taken of the surrounding circumstances. Suggested provision has been set out at Appendix 3, regarding which members views are sought.

3.4 Protecting your Reputation and the Reputation of the Council

In respect of the obligations in the Model Code regarding protecting the reputation of members and the Council, the following observations are made.

3.4.1 Registration and Disclosure of Interests

3.4.1.1 The provisions of the Model Code regarding registration and declaration of interests are set out in paragraph 9 and Appendix B of the Model Code and are arguably more complex than the provisions of the Council’s Code. The Council’s Code requires registration and declaration of Disclosable Pecuniary Interests (DPIs) and gifts and hospitality of a value of £50 and over. The Model Code also imposes requirements in respect of what are described as “Other Registrable Interests”, which are

- unpaid directorships,
- membership of, or the holding of a position of management or control in, a body to which the member is appointed or nominated by the Council
- any other body exercising functions of a public nature, or directed to charitable purposes, or a body, one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union).

3.4.1.2 The Model Code provides that such interests must be registered and where a matter at a meeting “directly relates” to the financial interest or wellbeing of one of a member’s Other Registrable Interests, it must be disclosed. If members of the public are allowed to speak on the matter, the member may do

likewise, however they must not otherwise take any part in the discussion or vote and must not remain in the room, unless they have a dispensation to do so.

- 3.4.1.3 There is also a further category of “Non-Registrable Interests” under which members are required to declare an interest if a matter at a meeting “directly relates” to their financial interest or well-being (and is not already a DPI) or a financial interest or well-being of a close associate. The member may speak if a member of the public is allowed to speak on the matter, but may not take part in any discussion or vote on the matter or remain in the room, unless granted a dispensation.
- 3.4.1.4 The Model Code then goes on to make further provision for the situation where a matter at a meeting “affects”, (as opposed to “directly relates to”) the member’s financial interest or well-being, the financial interest or wellbeing of a relative or close associate, or the financial interest or wellbeing of a body included in the “Other Registrable Interests” categories. A member must disclose the interest and apply a test set out at paragraph 9 of the Model Code, to determine whether they can remain in the meeting. This test requires the consideration of whether the interest affects the financial interest or well-being of the member to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and whether a reasonable member of the public, knowing all the facts, would believe that it would affect the member’s view of the wider public interest.
- 3.3.9.4 Whilst the Council’s current Code does not include provisions regarding “Other Registrable Interests” and “Non-Registrable Interests”, considerations regarding the appearance of bias are relevant when members are attending meetings and making decisions and this topic is included in training provided to members. As a result, for example, clear advice is given that members who are also members or directors / trustees etc. of organisations that are applying for funding from the Council, should declare the interest and leave the room. This is important because if a member took part in decisions in which they have a potential conflict of interest, arguably, they may expose themselves to an allegation that they had used their position improperly to gain an advantage or disadvantage, and/or that they were bringing their office or the Council into disrepute. In addition, certain decisions may be subject to challenge if the member concerned had taken part in their consideration.
- 3.3.9.5 The practice at the Council has been that in respect of all interests, whether DPIs or other interests, when considering whether to participate in a meeting considering a particular matter, members are advised to ask themselves whether a reasonable member of the public might think that their judgement could be affected. Would a fair minded and

informed observer, having considered the facts, conclude that a real possibility of bias exists?

- 3.3.9.6 This approach has worked well to date. Members identify areas where they may need to declare an interest and / or leave the room while a matter is being considered and if in doubt, they seek advice. There is no evidence to suggest that there are any issues or concerns with members participating in decision making on matters regarding which they have a conflict of interest. It is therefore suggested that paragraphs 13-18 of the Council's Code of Conduct as per the draft at Appendix 3 are sufficient. Nevertheless, the Committee may wish to consider whether it wishes to recommend a different approach to the registration and declaration of interests, in line with that suggested in the Model Code.

3.4.2 Gifts and hospitality

- 3.3.10.1 Similar provision is included in the Council's Code of Conduct.

4. Nolan Principles

- 4.1 The "Seven Principles of Public Life" or "Nolan Principles" are not referred to by those titles in the legislation relating to the Code of Conduct. The Localism Act 2011 simply requires the Code to be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These are however the principles commonly referred to as the "Nolan Principles".
- 4.2 The preamble to the Council's Code states that the Code is intended to be consistent with Nolan's Seven Principles of Public Life and should be read in the light of them. Annex 1 of the Code sets out, for information, the more detailed description of the principles, as those descriptions were when the Code was originally adopted.
- 4.3 Since adoption of the Council's Code, the descriptions attached to the Seven Principles of Public Life have been amended and now read as set out in Appendix A of the LGA Model Code.
- 4.4 It would be possible to continue to use the original description of the principles, but if so, it would be preferable and more accurate not to refer to them as Nolan's Seven Principles of Public Life.
- 4.5 It is recommended that the Annex to the Council's Code is either amended to reflect the updated descriptions of the Principles or, if the Committee prefers the original descriptions of the Principles, that the Code is amended to remove the reference to Nolan's Seven Principles of Public Life. The Code would continue to recite that it is intended to be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. This would still be compliant with the legislation.

5. Recommendations

- 5.1 The Standards Committee is recommended to consider:
 - 5.1.1 recommending Council to amend the Code of Conduct as shown in Appendix 3;
 - 5.1.2 whether to update the descriptions of the Seven Principles of Public Life as set out in the LGA Model Code or to retain the current descriptions and amend the Code accordingly;
 - 5.1.3 whether to propose changes to the Code to the provisions for registration and declaration of interests;
 - 5.1.4 any further amendments it wishes to propose to the Code of Conduct or;
 - 5.1.5 whether to take a different approach to amendment of the Council's Code to that proposed in the Report, such as to adopt the LGA Model Code in its entirety.

Background Papers

Sunderland City Council Code of Conduct
LGA Model Code of Conduct