

STANDARDS COMMITTEE
17 June 2013

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

6

TITLE OF REPORT : REVIEW OF THE MEMBER CODE OF CONDUCT

REPORT OF THE MONITORING OFFICER

1. SUMMARY

- 1.1 This report informs Standards Committee of proposed changes to the Member Code of Conduct adopted by Council on 12 July 2012.

2. RECOMMENDATIONS

- 2.1 That Standards Committee recommend to Council the adoption of the revised Member Code of Conduct.

3. REASONS FOR RECOMMENDATIONS

- 3.1 To take Standards Committee's views into account before consideration of the revisions by Full Council.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Codes of Conduct adopted by other Councils locally were considered and discounted as they did not address the resolution of the Committee at its 26 February 2013 meeting.

5. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS

- 5.1 The three Group Leaders have been consulted on the proposed approach and two points which were raised have been addressed in the draft Code being considered by the Committee..

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1 At its last meeting on 26 February 2013 the Committee received a report from the Monitoring Officer reviewing the changes introduced by the new Standards regime. The report included suggested changes to the Council's Member Code of Conduct:-

"It is considered that the Council chose the correct approach with its Code of Conduct, however upon reviewing there are areas where improvements could be made whilst maintaining the current approach:-

- *The pre-amble needs to be updated as the Committee on Standards in Public Life has recently updated their definitions of the principles of conduct. Consideration could be given to moving the pre-amble into part of Part 1 of the Code.*
- *Part 1 (the general obligations) could be better worded whilst retaining similar principles.*
- *Part 2 (Member's interests) would benefit from being clearer and simplified. Ideas include moving the list of Disclosable Pecuniary Interests into an appendix to the document; bringing together the Other Pecuniary and Non-Pecuniary into one single category; simplify the effect of interests on participation including relaxing the current interpretation that where there is a DPI the member cannot be present for any of the item (including initial speeches prior to debate).*
- *Tie in explicit references to other policies which govern Member conduct, including the Gifts and Hospitality Policy and Member/Officer Working Protocol.*
- *Generally seek to simplify, shorten and make less legalistic”*

7.2 The Committee agreed with the points identified by the Monitoring Officer and resolved that *“the Acting Monitoring Officer be requested to review and amend the Member Code of Conduct, along the lines set out at Paragraph 8.4 of the report [set out in italics above], for consideration at a future meeting of the Committee”*.

7.3 Attached at Appendix A is a draft revised Code of Conduct and, at Appendix B, the current adopted Code for comparison purposes. Members will note that the proposed revised code deliberately looks and feels different to the current one, whilst maintaining the same principles. It is believed that the proposed revised Code is easier to follow and understand for both Members and the public.

8. ISSUES

Note – unless stated otherwise references to paragraph numbers in this section refer to the sections in the draft Code of Conduct at Appendix A

General Approach

8.1 With regard to the final bullet point in the list at paragraph 7.1 above, it is felt that this has been achieved through the re-writing and re-structuring of the Code. Use has been made of the publications of the Committee on Standards in Public Life (first two sentences of 1.1 and the list at 3.1) and the DCLG Guide for Councillors: Openness and Transparency on Personal Interests (reasoning for inclusion of spouses at 4.1, approach taken in 7.1 and 7.2, appendix A). It was felt that using such an approach lent more weight to the Code of Conduct.

Section 2 – When the Code applies

8.2 Section 2, which sets out when the code of conduct applies, whilst re-drafted, has essentially not changed in approach save for two points. Paragraph 2.2(e) has been broadened slightly so that criminal convictions are not tied to a particular paragraph in section 3 (previously it was specifically linked to the equivalents of 3.2(c), 3.4(a) and 3.5(a)). This re-drafting gives a bit more flexibility than under the current code.

8.3 Paragraph 2.2(d) proposes a new approach in that conduct at any time which brings the Council into disrepute (3.4(a)) or abuses your position (3.5) would be captured under the Code. This is not without precedent, as this is the approach taken in Wales.

The rationale for this proposal is the high standards of conduct expected from those in public office and the recognition that the public do not differentiate from the individual and office if they see conduct they disagree with. Whilst potentially more conduct could be brought within the Code by this paragraph, the initial checks which the Monitoring Officer has to filter out complaints that do not have a case to answer will prevent frivolous or malicious complaints succeeding.

Section 3 – Rules of Conduct

- 8.4 As proposed to the Standards Committee in February the seven principles of public life have been moved from a pre-amble to within the body of the Code and are acknowledged as the principles which underlie the rules of conduct.
- 8.5 Section 3 retains the principles of the current Code, but proposes a re-structure and sub-headings to make it easier to follow. Paragraphs 3.4(b) and (c) are new, but simply seek to make explicit conduct which was implicitly covered under the current code. Paragraph 3.4(b) is not something seen at this Council, but would appear to have taken place at Parish Councils in the area. It is suggested it be made explicit to prevent attempts to abuse the complaints system.
- 8.6 Paragraph 3.6(a) adds the head of paid service to the requirement to have regard to advice from the Council's statutory officers. Paragraph 3.7 is new in that it makes explicit that breach of other Council policies which govern member behaviour may be a breach of the Code of Conduct. Previously the breach of one of the other policies would have to be linked to one of the obligations in the Code (for example bringing the authority into disrepute by breaching the gifts and hospitality policy).

Section 4 - Interests

- 8.7 Under the current code there are 3 types of interest – Disclosable Pecuniary Interests (as defined in the legislation), Other Pecuniary Interests and Non-Pecuniary Interests. It is recognised that these terms are cumbersome and some members are still referring to the 'old style' personal/prejudicial interests. As reported previously it is proposed that this is simplified into two categories – Disclosable Pecuniary Interests (the ones on a Member's register as required by legislation) and Declarable Interests (other interests the Council thinks should be declared in the public interest). The phrase 'Declarable Interests' is used by Herts County Council, although the categories at paragraph 4.5 are slightly different to HCC which are limited to 4.5 (a) and (b).
- 8.8 As previously suggested the definitions of DPIs have been moved from the body of the Code to an appendix. This makes the Code easier to follow and easier to update if the categories of interest change. In the current code the Regulations are repeated, but it is proposed in the revised Code that instead the explanation as set out in the DCLG guidance is used. It is felt that the guidance is clearer and easier to read than the regulations.
- 8.9 The Declarable Interests in paragraph 4.5 are essentially a merger of the existing 'Other Pecuniary' and 'Non-Pecuniary'. It is proposed that there is no longer a specific reference to voluntary work and that this is instead picked up under 4.5(a) or (c).

Sections 6 and 7 – Declaring Interests and Effect on Participation

- 8.10 Sections 6 and 7 are designed to be simpler and easier to follow than the current equivalents in paragraphs 14 to 16 of the existing code. Section 6 sets out what a Member needs to say if they have a DPI (6.1) or Declarable Interest (6.2). Section 7 then sets out what they are allowed to do once they have declared that interest. As

referenced above, 7.1 and 7.2 follow the interpretation of the legislation contained within the DCLG guidance, which is consistent with the approach the Council has been following, albeit 7.2 is now explicitly within the proposed Code.

- 8.11 Paragraph 7.3 is the test in the existing Code which is applied to determine whether one of the other types of Interest is so significant that a member should not take part. Paragraph 7.4 is also the Council's existing approach, albeit one that has occasionally been questioned by some members. The DCLG guidance recognises that Councils may choose to take this approach, which is compatible with the seven principles of public life. It is proposed that the Council maintains this approach which fits the principles of openness and integrity and prevent the public suggesting that a councillor with a relevant interest is able to influence a meeting even though they are not taking an active part.
- 8.12 Paragraph 7.5 is new and makes explicit the Council's current working practice as to the timing of when a member who has declared a relevant interest must leave the room ie after any speeches from members of the public.

Conclusion

- 8.13 It is considered that the revised Code at Appendix A addresses the points in the current Code identified as needing improvement, in particular creating a Code which is easier and clearer to understand and follow for Members and the public. The Standards Committee is asked to recommend to Council the adoption of the revised Code of Conduct.

9. LEGAL IMPLICATIONS

- 9.1 Under the Council's constitution, the terms of reference of Standards Committee include "To advise the Council upon the contents of and requirements for codes/protocols/other procedures relating to standards of conduct throughout the Council" and Council's terms of reference include "Adopting and amending the Authority's Code of Conduct for members and other codes and protocols comprising the ethical framework".
- 9.2 Section 27 of the Localism Act 2011 states that there remains a duty on the Council and the Monitoring Officer to promote high standards of conduct. Section 27(2) requires that relevant authorities must, in particular, adopt a code dealing with the conduct that is expected of members and voting co-opted members of the authority. The definition of co-opted member at section 27(4) excludes non-voting co-opted members. The definition of Disclosable Pecuniary Interests (DPIs) is contained in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. Section 27(12) of the Localism Act requires that an authority must publicise the adoption, revision or replacement of its code of conduct.

10. FINANCIAL IMPLICATIONS

- 10.1 This report has no direct capital or revenue implications for the Council.

11. RISK IMPLICATIONS

- 11.1 This report has no direct risk implications for NHDC.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.3 The contents of this report do not directly impact on equality, in that it is not making proposals that will have a direct impact on equality of access or outcomes for diverse groups.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at paragraphs 12.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 This report has no direct HR implications for the Council with regard to workload as Members are aware of the need to follow the existing Code. Advice on, and enforcement of, the Code of Conduct by the Monitoring Officer is factored into existing workloads.

15. APPENDICES

- 15.1 Appendix A - Revised Member Code of Conduct
Appendix B – Existing Member Code of Conduct, adopted 12 July 2012

16. CONTACT OFFICERS

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17. BACKGROUND PAPERS

None