

STANDARDS COMMITTEE

10 OCTOBER 2017

***PART 1 – PUBLIC DOCUMENT**

AGENDA ITEM No.

7

TITLE OF REPORT: CODE OF CONDUCT & REGISTRATION OF INTERESTS REVIEW

REPORT OF THE DEPUTY MONITORING OFFICER
EXECUTIVE MEMBER: [NON-EXECUTIVE FUNCTION]
COUNCIL OBJECTIVE: RESPONSIVE AND EFFICIENT

1. EXECUTIVE SUMMARY

- 1.1. For the Standards Committee to review the proposed amendments to NHDC's Councillors' Code of Conduct ('the Code') and Register of Interests process and form.

2. RECOMMENDATIONS

That the Committee recommends to Full Council that:

- 2.1. the amendments to the Code (shown as tracked changes to Appendix B), or such amendments as recommended by the Committee, be approved with effect from 4 May 2018.
- 2.2. the Monitoring Officer be authorised to make any consequential amendments to the Constitution to incorporate the new Councillor Speaking Right;
- 2.3. the amended Councillor's Register of Interests form (Appendix C) be adopted and to be completed by Councillors from 4 May 2018;

That subject to Full Council's approval detailed in 2.1, the Standards Committee:

- 2.4. authorises the Monitoring Officer to update the NHDC Code of Conduct Guide to reflect any adopted changes to the Code; and
- 2.5. notes the requirement to advertise the adoption of any amended Councillor Code of Conduct.

3. REASONS FOR RECOMMENDATIONS

- 3.1. The current Code was adopted in July 2013 and it is good practice to periodically review such policies to ensure they are working as intended. The review is part of scheduled service planning and the Annual Governance Statement ('AGS') Action Plan for 2017/18. This will ensure that the Code / practices are kept up to date and effective governance is promoted.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 The Code and declarations/ Register of Interests process could remain the same.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Independent and Reserve Independent Person (IPs) have been involved in the review process.
- 5.2. Draft amended versions of the Code and Register of Interests form were forwarded to Group Leaders, the IPs and relevant Officers on 8 August 2017 for comment. Relevant amendments have been made following this consultation to the appended documents.
- 5.3. Members were informed of the review in the Annual Report of the Standards Committee, which was reported to Council on 18 May 2017.

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 The Localism Act 2011 ('2011 Act') abolished the obligatory standards regime and mandatory Code of Conduct in England, when the relevant parts of the Act came into force in July 2012. Since 2012 local authorities have been required to: "*promote and maintain high standards of conduct by member and co-opted members of the authority*" and to adopt a code dealing with the conduct that is expected of Councillors and co-opted Councillors, when acting in that capacity¹. The Code has to be consistent with the seven Nolan Principles of Public Life and cover registration and disclosure of pecuniary and other interests². The 2011 Act introduced criminal offences of failing to declare or register a pecuniary interest ('DPI') with those interests being set out in The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 ('Regulations 2012').
- 7.2 Since 2012, the Committee on Standards in Public Life ('CSPL') has kept a watching brief on the local government standards regime, including the need for a mandatory code of conduct in England and effective sanctions. In its annual report for 2015-16³ / forward plan the Committee stated that it would review ethical standards and that this would straddle the work programmes for 2016-17-18.
- 7.3 The Department of Communities and Local Government previously intimated that it would review the 2011 Act standards arrangements after they had been in operation for 5 years (due in 2017). *It would appear* that this has been limited to a consultation on strengthening the disqualification criteria for elected councillors (see Standards Matters report update). Whether any further recommendations will result from this review/ or following the CSPL's review (such as a recommendation on a mandatory code in England), is yet to be seen.
- 7.4 At this stage, however, the legislative position has not changed. The Code was last reviewed in 2013 and as outlined in the Standards Matters report of 21 February 2017 would be reviewed, together with the approach towards registration of interests. The authority is also required to review its governance arrangements annually, as part of the AGS⁴ audit practice. Where appropriate these arrangements should be updated.

¹ Section 27(1) & (2).

² Section 28(1) & (2)

³ Published on 4 August 2016 with forward plan for 2016-17; & again on 10 July 2017 CSPL page: [https://www.gov.uk/government/organisations/the-committee-on-](https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life)

[standards-in-public-life](#)

⁴ [Corporate Governance page \[CLICK HERE\]](#)

Councillors' conduct/ codes/ mechanisms for dealing with complaints have to be considered as part of the AGS process and the Code and declarations/ Register of interests was identified in the AGS Actions Plan for review during 2017/18.

8. RELEVANT CONSIDERATIONS

The Code proposed amendments:

- 8.1. The Code in Appendix B shows a large degree of tracked changes; *however*, some of these are cosmetic (for uniformity) and movement of one area of the Code to another. The main proposed changes are set out in the table below:

Paragraph	Proposed change summary	Reason
1 Introduction	What the Code is, who it applies to, and what underpins the Code.	To make it clearer.
2 When does the Code of Conduct Apply (c) & (e)	(c) Inclusion of working groups, parties and panels in 'meetings' definition; and (e) clarification on criminal offences (where these have been dealt with in an "out of court disposal" way).	To cover potential gaps in meeting/offence situations. The 'out of court disposal' term comes from the Crown Prosecution Service and covers, for example, simple/conditional cautions and other similar criminal offence discharges, which are described in the footnote. Increasingly these will be offered and the Council should be in a position to consider situations where this arises.
3 Rules of Conduct 3.1	Moved 3.1 the full Nolan principles to Appendix B, with an explanation at 1.2 as to how these will be applied.	Whilst the Nolan principles should "underpin" the Code and its interpretation, they are not a potential breach in themselves and inclusion in this part has caused confusion to complainants, who have cited these as a potential breach. Adding an explanation at 1.2 and the Appendix will aid understanding.
3.1	3.1 NEW general obligation to comply with the Code.	To clarify to both Members and the public that all sections of the Code must be complied with (not just the rules on behaviour) and that failure to do so could be a breach of the Code.
3.2 (a)	Amended to include updated Equality Act 2010 requirements relating to protected characteristics.	To ensure the Code is kept up to date with current equality provisions.
3.2 (b)	NEW obligation not to do anything that causes the authority to breach the public sector equality duty.	Based on some proposed amendments to other British (mandatory) codes.
3.6 (b)	NEW obligation to act reasonably (Wednesbury reasonableness), not to prejudge/ act in a bias manner.	To promote effective decision making.
3.7 (a)	NEW "public duty" requirement to comply with the criminal law.	Based on some proposed amendments to other British (mandatory) codes. Also includes a notification requirement to the MO.
3.7 (e)	NEW – obligation to attend compulsory training provided by the authority or directed to attend following a standards complaint. Compulsory is defined in footnotes to this provision: "Compulsory" if this is designated as such by:	This is to try to address the issue we have with take up of training, and Councillors indicating that it would benefit them to know what was compulsory and which was not. NB computer tablets have been offered to Councillors and a new e-learning system is being implemented at this

	<ul style="list-style-type: none"> - a Statutory Officer (Head of Paid Service, Chief Finance Officer/s151 or Monitoring Officer) with the agreement of Group Leaders; or - Full Council, Cabinet or Committee. <p><i>“Directed” to do so:</i></p> <ul style="list-style-type: none"> - following a standards complaint and the MO decides that a Councillor should attend training as part of the informal resolution; or - Standards Sub-Committee following the determination of a complaint. 	<p>stage. It will mean that training is more accessible to Councillors when this obligation is due to apply from 4 May 2018 onwards.</p> <p>It is also to address potential situations where training has been directed and is not complied with.</p>
PART 2 COUNCILLORS’ INTERESTS	NEW introduction part confirming there are specific obligations in relation to registration, declaration and participation in meetings. There are a number of changes to how this is set out as opposed to substance.	Again for clarification.
4.1 – 4.5 DPI wording	Redrafted.	To make this more specific and reflect the 2011 Act/ Regulations 2012 wording.
4.6 (c) 4.6 (d) – becomes (c) & old (e) becomes (d)	Old (c) deleted: <i>“the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest;”</i>	Effectively duplicated by the previous 7.3, which has merged under the new wording for paragraph 6. Also supplemented by the new 3.6 (b) provision.
4.7	NEW obligation to register certain Declarable Interests (4.6 (c) & (d) on the same Register of Interests form that is used for DPIs.	To keep as much of a Councillor’s interests information in one document. Aids transparency and simplifies administrative process. It will also be consistent with the revised approach to be or already adopted by a number of local authorities in the region.
5 Sensitive Information	Re-worded as SENSITIVE ‘INTERESTS’ and further directions on what a Councillor needs to do in terms of declaring participation and voting/ register of interests.	To clarify the requirements in those situations.
6 Declaring interests and 7 Participation at meetings	6 & 7 Merged to a reworded paragraph 6 ‘DECLARING INTERESTS, PARTICIPATING AND VOTING AT MEETINGS’ 6.2 (b) There is also a proposed NEW Councillor “Speaking Right” in substitution for speaking as a member of the public.	To make this more straightforward. A Councillor speaking as a member of the public has been problematic in terms of perception and timing. Note the new Speaking Right cannot be claimed in informal meetings and does not apply to DPIs.
7 Dispensations	Previously old paragraph 8. There has been some re-wording, splitting into two sub-sections and coverage for Declarable Interests. The grounds for such a dispensation have been put into a NEW Appendix C.	Inclusion of grounds for a dispensation will assist understanding and potential applications to the Monitoring Officer.

8.2. There are also some general tracking and formatting changes, including uniform reference to ‘Councillor’ (as opposed to some Member or Councillor) and the authority (previous references were between the Council or authority). Some similar wording

has also been used for consistency of reference (eg 3.4 & 3.6 reference to Statutory Officers).

- 8.3. Councillors will note that the changes proposed under the revised/ merged paragraphs 6 & 7 include a Councillor 'Speaking Right'; this is to address the perception and timing issues of a Councillor being an elected Councillor on the one hand and then becoming/ or apparently becoming a member of the public the next to speak to an item if/ when the Councillor has a Declarable Interest. This right would only apply to Declarable Interests, not to DPIs and could not be exercised in informal meetings, where transparency/ bias are key considerations. If Full Council approves this amendment, the Monitoring Officer will need to review/ make minor amendments to the Constitution to ensure this Speaking Right is reflected⁵. Councillors will be notified via MIS and this reported to any subsequent Council meeting. Any change in process will also have to be made evident on meeting agendas.
- 8.4. The amended clean version (with tracked changes accepted) is appended at A and the Code showing tracked changes is appended at B (font format amendments have not been shown as tracked changes, eg lower case to capital etc.).

Councillor's declaration form & Registration process:

- 8.5. As indicated above, the authority must have a code that includes provisions for registration and declaration of DPIs and other interests, and DPIs must be entered on the Register of Interests. The authority has, up until now, used a notification/ declaration form for DPIs only, and once the form has been received by the Monitoring Officer, the Interests information has been manually transferred onto a central excel spreadsheet – and this has acted as the 'Register'.
- 8.6. The revised Code includes a requirement to register certain Declarable Interests (*those under the amended 4.6 (c) – i.e. gifts & hospitality over £50 in the last six years and (d) membership or general control/ management of defined bodies*) on the same Register of Interests form. Neither of these Declarable Interests are new; however, *currently*: in respect of the former, any gifts or hospitality has to be declared on a separate form, and in terms of the latter – even though this is something that will be known to the Councillor, it only has to be declared when an item of authority business affects those bodies. The requirement to register such information on one Councillor's Register of Interests form will simplify the process for gifts & hospitality on the one hand and promote transparency/ centralisation of a Councillor's Interests information on the other.
- 8.7. The current system of manually transferring information creates an unnecessary administrative stage, could lead to transcribing errors and given there will potentially be further Declarable Interests information that will have to be transferred, it is recommended that the notification/declaration form as was, becomes the individual Councillor's Register of Interests. Once received it will be scanned onto the system (signature redacted) and retained on the individual Councillor's website page until replaced/ or the Councillor is no longer elected (amounting to automatic removal from the website – rather than manual amendment to the Register if the Councillor does not stand again/ or is not re-elected).
- 8.8. Whilst DPIs have to be disclosed and put on a Register, the format of that Register is a matter for the authority. If it decides that this can be on one document submitted by the Councillor, then the requirements under the 2011 Act will have been met (providing this Register of Interests form is made available for inspection and on the authority's website).

⁵ Eg Planning Control Committee Section 8 Appendices 1 & 2.
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- 8.9. If Full Council adopts the revised provisions relating to registration of 4.6(c), the Gifts & Hospitality Protocol will also have to be amended slightly to reflect this.
- 8.10. The new form is set out as a “clean” amended version at Appendix C, with the version showing the tracked changes at Appendix D (font format amendments have not been shown as tracked changes).

Implementation Date

- 8.11. The date for the new Code and Register of Interest form to come into operation is recommended for the new municipal year - commencing on 4 May 2018 (the election day is 3 May 2018) to allow time to revise: the Constitution, the NHDC Guide on the amended Code, the ‘NHDC Members’ Protocol for Gifts and Hospitality’ and Councillor training to be offered/ provided in advance of this date.

9. LEGAL IMPLICATIONS

The Code:

- 9.1 There is no mandatory English Code, although as indicated under the Background, the Code must be consistent with the Nolan principles and include provisions concerning registration and disclosure of DPs and other interests.
- 9.2 The Terms of Reference of this Committee under 7.5.4 of the Constitution are “ *to advise the Council on the adoption or revision of the Members’ Code of Conduct*”. The Standards Committee does not, however have the legal ability to adopt a revised Code, as this is reserved under section 28(13) of the 2011 Act to Full Council. The Terms of Reference of Full Council provide under 4.4.1 that only Full Council will exercise the following functions: “*(s) adopting and amending the Authority’s Code of Conduct for Members and other codes and protocols comprising the ethical framework*”.
- 9.3 Under the 2011 Act a revised or replacement Code has to be publicised in such a manner that is likely to bring this to the attention of those who live in the area⁶ and this will be organised by the Monitoring Officer.
- 9.4 Full Council also has the legal remit to authorise amendments to the Constitution. If the proposed change relating to the new Councillor ‘Speaking Right’ is adopted, then amendments to relevant parts of the Constitution will have to be considered/ made. The Monitoring Officer has delegated authority to deal with minor amendments or to put in to effect any that relate to a decision of the Council. Such amendment in this instance, to come into effect the same date as the Code. Any changes will be reported back to Councillors in the normal manner post change via MIS and the next meeting of Council (as per sections 2.6.2 (a) & (c), 2.6.3 & 2.6.4 of the Constitution).
- 9.5 The Corporate Legal Manager (the Monitoring Officer) has delegated authority under section 14.6.9(c) of the Constitution: “*to authorise changes to the Governance Policies/ Protocols/ Codes or Guidance (as the case may be) that fall within the remit of the Monitoring Officer and/ or Legal Services (and are not already covered by 14.6.9(d) to reflect decisions of the Council / Committees and the Cabinet, or minor ones relating to changes of fact and law, or if required for practical purposes, in order to ensure the proper administration of the Council, subject to regular notification to all Members of such changes.*” This would therefore apply to the Gifts & Hospitality Protocol and the NHDC Guide to the Code of Conduct.

⁶ Section 28(12) of the 2011 Act.
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Register of Interests:

- 9.6 There is no prescribed form for a Councillors' Register of Interests, although the Monitoring Officer must establish and maintain the Register, and make it available for inspection and publish this on the authority's website⁷.
- 9.7 The Terms of Reference of this Committee under 7.5.1 of the Constitution are "*to promote and maintain high standards of conduct by Members and Co-Opted Members of the authority*". Whilst the Register format could be a matter for the Monitoring Officer, it is appropriate for this to be considered by this Committee and any changes in terms of the individual Register of Interests/ placing these on the Councillor's page, to be endorsed by Full Council.
- 9.8 The content of the report and actions therefore fall within the remit of the Standards Committee to consider and make recommendations to Council.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no capital or revenue implications arising from the content of this report.

11. RISK IMPLICATIONS

- 11.1 Appropriate policy frameworks help to ensure that the authority has good governance arrangements in place.

12. EQUALITIES IMPLICATIONS

- 12.1 In line with the Public Sector Equality Duty, public bodies must, in the exercise of their 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.
- 12.2 Whilst the proposals include amending the Code to reflect updated protected characteristics and the Public Sector Duty, that are no other direct equality implications of this report.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 The Social Value Act and "go local" policy do not apply to this report.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 There are no direct human resource implications relating to this matter.

15. APPENDICES

- 15.1 Appendix A – **Clean version of the Code *with tracked changes accepted***;
- 15.2 Appendix B – Code with tracked changes;
- 15.3 Appendix C – **Clean version of the Councillor's Register of Interests Form *with tracked changes accepted***; and
- 15.4 Appendix D – former notification/ declarations form with tracked changes.

⁷ Section 29 of the 2011 Act.
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16. CONTACT OFFICERS

16.1. Jeanette Thompson 01462 474370. Senior Lawyer and Deputy Monitoring Officer:
jeanette.thompson@north-herts.gov.uk

16.2. Anthony Roche 01460 474588 Corporate Legal Manager and Monitoring Officer:
anthony.roche@north-herts.gov.uk

Contributor/ liaison Officers on report:

16.3. Ian Couper 01462 474243 Head of Finance, Performance & Asset Management:
ian.couper@north-herts.gov.uk

16.4. Kerry Shorrocks 01462 474224 Corporate Human Resources Manager:
kerry.shorrocks@north-herts.gov.uk

16.5. Reuben Ayavoo 01462 474212 Policy Officer:
reuben.ayavoo@north-herts.gov.uk

17. BACKGROUND PAPERS

17.1. Section 17 NHDC Constitution – Code of Conduct [\[CLICK HERE\]](#).

17.2. The NHDC Constitution [\[CLICK HERE\]](#).

17.3. [NHDC Members' Protocol for Gifts and Hospitality](#)

17.4. [Corporate Governance page \[CLICK HERE\]](#)