

North Tyneside Council

Report to Standards Committee

Date: 3 November 2021

ITEM

Title: Review of the Code of Conduct for Members and Co-opted Members of the Authority

Report from Service Area: Law and Governance

Report Author: Bryn Roberts, Head of Law and Governance and Monitoring Officer (Tel: 643 5339)

Wards affected: All

1.1 Purpose:

To provide a report on the review of the Authority Code of Conduct for Members and Co-opted Members of the Authority as a result of the publication of the Local Government Association's publication of its Model Code Councillor Code of Conduct, and to set out the proposed amendments to the Authority's Code of Conduct following the review.

1.2 Recommendation(s):

1. Consideration be given by the Committee to revising the Code of Conduct for Members and Co-opted Members of the Authority as set out in Appendix 3 of the report;
2. Any revision to the Code of Conduct agreed by the Committee be referred to the Constitutional Task Group with a recommendation that the revision of the Code of Conduct be accepted by the Constitutional Task Group and referred to full Council for approval; and
3. A Member Working Group undertake a review of the Local Arrangements for Dealing with Allegations of Breaches of the Code of Conduct for Members and Co-opted Members of the Authority and report back to the Committee in January 2022.

1.3 Information

- 1.3.1 Under section 28 of the Localism Act 2011, the Authority must have in place "arrangements" under which allegations that an elected or co-opted Member of the Authority has failed to comply with the Authority's Code of Conduct can be considered and decisions taken on such allegations. The Authority's current Code of Conduct was adopted by full Council on 4 July 2012 and is appended to the report as Appendix 1.

- 1.3.2 In December 2020 the Local Government Association developed and published a Model Councillor Code of Conduct following consultation. The LGA's Model Code of Conduct was published in response to a recommendation from the Committee of Standards in Public Life. Guidance to the Model Code of Conduct has also been published by the LGA and the Code of Conduct should be read alongside the guidance. The LGA's Model Councillor Code of Conduct is appended to the report as Appendix 2.
- 1.3.3 It was agreed by the Committee on 8 April 2021 that a Member Working Group should be established to consider the LGA's Model Code of Conduct against the Authority's current Code of Conduct and to make recommendations as to whether or not any amendments should be made to the Authority's Code of Conduct. It was further agreed that any proposed amendments to the Authority's Code of Conduct would be referred to the Constitution Task Group for its consideration.
- 1.3.3 The Member Working Group met on 5 August 2021 and 28 October 2021 to consider in depth the differences between the LGA Model Councillor Code of Conduct and the Authority's Code of Conduct. After comparing the two Codes of Conduct, the Member Working Group proposes that the Authority's Code of Conduct for Members and Co-opted Members be revised to the extent set out in the proposed Code of Conduct appended to the report at Appendix 3 and explained below.

Revision of the Current Code of Conduct

- 1.3.5 The amendments made to the Code of Conduct are as follows: -
- a) A new "Definitions" section is included in the Code of Conduct to define what is meant by "member", "co-opted member" and "local authority" for the purposes of the Code.
 - b) A new "Purpose of the Code of Conduct" section has been included in the Code, which explains in broad terms what the purpose of the Code is and what it is designed to achieve.
 - c) A new "General principles of member conduct" section has been added to the Code emphasising the need for Members to uphold the seven Principles of Public Life (also known as the "Nolan Principles") and what conduct is acceptable and expected of Members when acting in their capacity as a Member.
 - d) A new "Application of the Code of Conduct" section has been included in the Code to make it clear when the Code of Conduct applies and in what sort of settings the Code will apply.

Part 1 – General Conduct

This section sets out Members' obligations and the minimum standards of conduct expected of them. The section also provides a link to the LGA's Guidance on the "Model Councillor Code of Conduct" which it is recommended should be read in conjunction with the Authority's proposed Code of Conduct which is largely based on the LGA's Model Code of Conduct.

- e) Respect – The need to treat others with respect is included in the current Code of Conduct.

The proposed Code of Conduct includes a definition of what "respect" means in terms of Members behaviour and the behaviour of members of the public towards Members.

- f) Bullying, harassment, and discrimination – The current Code of Conduct refers to bullying, intimidation and improper influence. It does not refer to harassment or discrimination in the context of “bullying”.

The proposed Code of Conduct includes a definition of “bullying”, and “harassment” and deals with discrimination and equality considerations under the Equality Act 2010.

- g) Impartiality of officers of the Authority – The current Code of Conduct deals with the impartiality of officers.

The proposed Code of Conduct explains what this aspect of the Code means and what Members can and cannot do to undermine the neutrality of officers.

- h) Confidentiality and access to information – The current Code of Conduct includes a requirement for members not to disclose information given in confidence or information which a Member ought reasonably to be aware is of a confidential nature.

The proposed Code of Conduct adds to the current Code by stating that Members must not improperly use knowledge gained solely as a result of their role as a member for the advancement of themselves, their friends, their family members, their employer, or their business interests. The proposed Code of Conduct also makes it clear that there will be times when discussions, documents, and other information relating to, or held by the Authority, must be treated in a confidential manner and cannot be disclosed or discussed with others not entitled to this information.

The proposed Code of Conduct also prohibits a Member from preventing a person getting information that they are entitled to by law.

- i) Disrepute – The current Code of Conduct refers to Members not acting in a way that would be regarded as bringing the Authority or the office of Member into disrepute.

The proposed Code of Conduct gives some narrative as to what is meant about bringing the Authority/office of Member into disrepute and explains that Members behaving in a certain manner can bring the Authority/office of Member into disrepute.

- j) Use of Position – This type of conduct is included in the current Code of Conduct.

The Proposed Code of Conduct explains that Members should not take advantage of opportunities to further their own or other’s interest at the expense of others.

- k) Use of the Authority’s resources and facilities – This issue is included in the current Code of Conduct

The Proposed Code of Conduct reinforces the requirements for the use of the Authority’s resources and that they cannot be used for political purposes and lists the resources that may be available to Members from time to time.

- l) Complying with the Code of Conduct – The current Code of Conduct, surprisingly, does not require a Member to comply with the Code of Conduct.

The proposed Code of Conduct will require Members to comply with the Code of Conduct, to undertake training on the Code of Conduct to co-operate with any investigation of a complaint and to comply with any sanction imposed on them following a finding that the Code of Conduct has been breached.

- m) Interests – The current Code of Conduct deals with the need to declare interests, consisting of disclosable pecuniary interests, other registerable interests and non-registerable interests but is not listed in the “General Conduct” section of the Code.

The proposed Code of Conduct includes in the “General Conduct” section the need for Members to register and declare interests as part of their “General Conduct”. The proposed Code of Conduct as with the current Code, requires Members to declare Disclosable Pecuniary Interests in accordance with the Localism Act 2011 and highlights that a failure to do so is a criminal offence.

- n) Gifts and hospitality – The current Code of Conduct does not refer to the acceptance of gifts or hospitality by Members in the “General Conduct” section.

The proposed Code of Conduct will include gifts and hospitality in the General Section and specifies that Members should not ordinarily accept gifts or hospitality that brings them personal gain. On occasions when gifts or hospitality are accepted, Members must ensure that their receipt is publicly registered.

- o) Scrutiny of Decisions – The current Code of Conduct excludes a Member from being part of the Overview, Scrutiny and Policy Development Committee reviewing a decision taken by that Member, save when the Committee requires the attendance of the Member before it.

The proposed Code of Conduct will include the same exclusion.

This requirement goes over and above what is included in the LGA Model Councillor Code of Conduct.

- p) Safeguarding – The current Code of Conduct requires Members to report any suspicion, intelligence/information that they have in relation to safeguarding issues concerning children or vulnerable adults, including any potential or actual sexual exploitation to the Authority and where appropriate the Police.

The proposed Code of Conduct will include such a requirement.

The inclusion of this requirement goes over and above the requirements included in the LGA Model Code of Conduct.

Part 2 – Registration of Interests

The proposed Code of Conduct adds to what is already included in the current Code of Conduct. It sets out clearly the legal duty placed on Members to disclose “registerable personal interests” which include **Disclosable Pecuniary Interests** and **other registerable interests**.

The proposed Code of Conduct makes it clear that the duty to disclose registerable personal interests applies equally to newly elected Members, re-elected Members and newly appointed/re-appointed office holders. The proposed Code of Conduct in particular makes it very clear that Disclosable Pecuniary Interests must be notified in writing to the Monitoring Officer within 28 days of election/re-election, appointment/re-appointment. As with the existing Code of Conduct a failure register Disclosable Pecuniary Interests within the 28-day period is a criminal offence under the Localism Act 2011.

The proposed Code of Conduct also emphasises that it is an offence to provide false or misleading information in relation to Disclosable Pecuniary Interests or to provide information recklessly as to whether the information is true and not misleading.

The proposed Code of Conduct also makes it clear that a Member must notify the Monitoring Officer of any new Disclosable Pecuniary Interest or a change to an existing Disclosable Pecuniary Interest as well as notifying the Monitoring officer of any new other registerable interest or change to such an interest.

The Proposed Code of Conduct also points out that declaring Disclosable Pecuniary Interests to the Monitoring Officer does not obviate the need to provide the same information, if required to do so under any other legislative framework or vice versa. An example of this would be donations of over £50.00 received by a Member during an election campaign needing to be disclosed to the Returning Officer in a Candidate Spending Return under election legislation, as well as such information needing to be included as a Disclosable Pecuniary Interest as “Sponsorship” which includes election expenses received in a previous 12 month period.

Part 3 Disclosure of Non-Registerable Interests

The proposed Code of Conduct follows the existing Code of Conduct save that it adds to the “persons” whose wellbeing, or financial position must be considered when an item of business falls to be determined by a Member.

The proposed Code of Conduct adds to the “persons” currently listed in paragraph 16 of the existing Code of Conduct by adding to that list a body appearing in a Member’s Register of Interest in Annex 3 of the Code of Conduct – Other Registerable Interests.

The proposed Code of Conduct continues to require a Member to disclose a non-registerable interest to a meeting before consideration of the item begins.

Part 4 – Non-Participation in Authority Business

The proposed Code of Conduct follows Part 4 of the existing Code of Conduct insofar as when a Member should not participate in a meeting of the Authority.

The only addition in the proposed Code of Conduct is an example of a single decision-maker not exercising their decision-making powers when the criteria set out in paragraph 18 of the proposed Code of Conduct (and the existing Code of Conduct) are met. The example given is a Cabinet member not exercising their delegated authority when the criteria in paragraph 18 are met.

There is a further warning at this point of the proposed Code of Conduct about a failure to declare a Disclosable Pecuniary Interest when considering an item of business is a criminal offence, unless a Member has been granted a dispensation by the Committee.

Annex 1 to Code of Conduct

This Annex is the Seven Principles of Public Life (the Nolan Principles).

The existing Code of Conduct does not set out the correct narrative for each of the Nolan Principles. Annex 1 of the proposed Code of Conduct sets out the Nolan Principles in full, with the correct narrative for each Principle included in the Annex.

Annex 2 to Code of Conduct

This Annex relates to the Disclosable Pecuniary Interests that must be disclosed to the Monitoring Officer with any changes thereto also being duly notified in the requisite 28 days period.

The Annex in the proposed Code of Conduct is written in the first person rather than in the third person as is currently the case with the Annex attached to the current Code of Conduct.

As the interests listed in Annex 2 are set by Regulations, naturally the interests listed in Annex 2 of the proposed Code of Conduct remain the same as Annex 2 of the current Code of Conduct.

Annex 3 to the Code of Conduct

This Annex relates to Other Registerable Interests and the proposed Code of Conduct follows the existing Annex 3 to the current Code of Conduct.

Further Considerations

- 1.3.6 The LGA on publishing its Model Councillor Code of Conduct indicated that it would review the Code annually. Any changes made to the LGA Model Code of Conduct will need to be considered by the Authority to determine if any revision needs to be made to the Authority's Code of Conduct.
- 1.3.7 As stated above, the LGA has published a guidance to the Model Code of Conduct. The guidance deal with, amongst other things the following: -
- The submission of Complaints
 - The initial assessment of complaints
 - The assessment criteria to be applied when assessing complaints
 - Informal resolution of complaints
 - The role of Monitoring Officer
 - Investigations
 - The hearing process
 - Making a finding
 - Sanctions
 - Publicising the findings
- 1.3.8 Given the extent of the LGA guidance it would seem to be an appropriate time for the Authority's "Local Arrangements" to be reviewed by a Member Working Group to ascertain if any changes need to be made to the Arrangements. Once the review has been completed, a report could be brought back to the Committee for its consideration and a decision taken on whether any changes to the Local Arrangements are considered appropriate.

1.4 Appendices:

Appendix 1 – The Current Code of Conduct for Members and Co-opted members of the Authority

Appendix 2 - The Local Government Association Model Councillor Code of Conduct

Appendix 3 - The Proposed Code of Conduct for Members and Co-opted Members of the Authority

1.5 Contact officers:

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1.6 Background information:

- The Localism Act 2011.
- The Local Government Association's Guidance on its Model Councillor Code of Conduct.