



Training to Standards Committee

Code of Conduct and Standards Complaint Handling

Barry Khan, Assistant Chief Executive (Legal and Democratic Services) and Monitoring Officer

Moira Beighton, Senior Lawyer (Governance)

16 September 2022

The importance of standards in public life

“Local government impacts the lives of citizens every day, providing essential services to those it serves. Its decisions directly affect the quality of life of local people. High standards of conduct in local government are needed to demonstrate that those decisions are taken in the public interest and to maintain public confidence”

The Committee on Standards in Public Life

Aims today

- Refresh regarding:
 - importance of standards in public life
 - key parts of Members' Code of Conduct
 - supporting ethical framework under Localism Act 2011
 - standards complaint handling



NYCC Ethical Statement

North Yorkshire County Council believes in a strong ethical organisational culture. It aims to promote the highest levels of conduct by its members and officers, to increase public trust in the delivery of its vision and its objectives, by:

- *maintaining openness and transparency in conducting its business;*
- *being accountable for all it says and does;*
- *ensuring that everyone knows what is expected of them;*
- *offering appropriate training and development programmes; and*
- *promoting the work of its Standards Committee.*

Ethical Framework / Standards Regime

- Legal framework: Localism Act 2011 and associated regulations
 - Statutory duty to **promote and maintain high standards** of conduct - eg ethical statements, Member training, Standards Bulletins, Council website, working with neighbouring authorities
- Members' Code of Conduct and supporting Guidance
 - LGA Guidance issued in July 2021 - <https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>
- Register of Members' Interests
- Register of Members' Gifts & Hospitality
- Standards Committee
- Two Independent Persons for Standards
- Statutory Monitoring Officer - supports promotion of high ethical standards
- Protocol on Member/Officer Relations
- Other NYCC policies/procedures eg Counter Fraud (incl Whistleblowing, Anti-Money Laundering)

Members' Code of Conduct

- Revised NYCC Code from 5 May 2022 (in light of LGA Model Code)
- Applies when acting in **official capacity** as a councillor
- Purpose of Code:
 - To assist councillors in modelling the expected behaviour
 - To provide a personal check and balance
 - To set out the type of conduct that could lead to action being taken against you
 - Also to protect you, the public, your fellow councillors, officers and the reputation of local government
- Failure to comply may result in complaint to MO of breach of Code

Key features of Code

The Code is split into two main parts:

- **General conduct obligations**
- **Interests regime - Registration and Declarations of interests**

Three types of interest:

- (a) Disposable pecuniary interests
- (b) Other registerable interests
- (c) Non-registerable interests

Two situations

- Registration
- Declaration

General Principles of Public Life

- apply to all who hold public office
- Code of Conduct must be consistent with them
 - a) selflessness
 - b) integrity
 - c) objectivity
 - d) accountability
 - e) openness
 - f) honesty
 - g) leadership

General Conduct obligations

1. Treating others with **respect**
2. Not unlawfully **discriminating**
3. Not **bullying, intimidating** or **harassing**
4. Not compromising the **impartiality** of officers
5. Not disclosing **confidential information** - dealing properly with information
6. Not preventing others' **access to information**
7. Not bringing Council/office into **disrepute**
8. Not **using position improperly**
9. Not involved in **scrutiny** of decision involved in making
10. Dealing properly with **gifts and hospitality**
11. Not improperly using **Council resources**
12. Having **regard to CFO/MO advice**
13. Registering and declaring **interests**
14. Complying with **standards regime**

Gifts and Hospitality

- ❖ **Not** accept **gift/hospitality** (any value) which could create impression of **obligation** upon Member/NYCC or substantive personal gain or propensity to show favour. Inform MO.
- ❖ Otherwise **register** any gift/hospitality **received or offered** worth **£25 or more**.

Interests Regime

- Three **types**

Financial

➤ Disclosable pecuniary interests (DPIs) - **SAME**) Appear in Register

Public service

➤ Other registerable interests (ORIs) - **EXPANDED**) of Interests

Life!

➤ Non-registerable interests (NRIs) - **NEW** - Just arise

❖ a matter arises which directly relates to (or affects) Member's financial interest/wellbeing or that of a relative/close associate/(ORI body) (of which you could reasonably be expected to be aware)

- Two **situations**

➤ Registration

➤ Disclosure

NB SENSITIVE INTERESTS

Member and MO agree disclosure could lead to Member/connected person being subject to violence or intimidation

Register of Members' Interests

- must register interests within 28 days of election/appointment
- register interests (and gifts and hospitality) electronically via committee management software (ModGov)
- Keep entries under review - register any changes within 28 days
- Register is published online and is available for public inspection at all reasonable hours

Registration of Interests

- **Disclosable pecuniary interests (DPI)**

- Employment, office, trade, profession or vacation (**for profit or gain**)
- Sponsorship
- Contracts
- Land, Licenses, Corporate tenancies
- Securities

and either—

(a) it is the Member's interest **or**

(b) that of spouse/civil partner/person with whom living as such and the Member is **aware** that that other person has the interest.

**** Failure to comply with requirements re DPIs (without reasonable excuse) may be a CRIMINAL OFFENCE - £5K fine and/or disqualification for 5 years ****

Registration of Interests (2)

- **Other Registrable Interests (ORI) – *YOUR* interests only**
 - Unpaid directorships
 - Any **body** of which you are a **member** or in a position of general **control or management** and to which you are **nominated or appointed** by NYCC
 - Any **body** of which you are a **member** or in a position of general **control or management**
 - ❖ exercising functions of a **public nature**
 - ❖ directed to **charitable purposes** or
 - ❖ one of whose principal purposes includes the **influence of public opinion or policy** (including any **political party or trade union/professional association**)

Disclosure of DPIs at meetings

- if a Member:
 - ❖ is present at a meeting
 - ❖ has a DPI **directly relating** to a matter to be considered and
 - ❖ is aware that s/he has the interest -
- Member must **disclose** existence and nature of interests to meeting (subject to provisions re sensitive interests) and notify MO within 28 days if not already registered in Register of Interests
- then Member may not:
 - ❖ participate in any discussion on matter
 - ❖ participate in any vote

UNLESS have **dispensation** from Standards Committee or MO
- Members with a DPI must **withdraw** from the meeting room whilst the discussion or vote takes place. Cannot first make representations (even if public can).

Disclosure of ORIs at meetings

- if a Member:
 - ❖ is present at a meeting and
 - ❖ a matter arises which **directly relates** to the **financial interest** or **wellbeing** of one of your ORIs
- Member must **disclose** existence and nature of interest to meeting (subject to provisions re sensitive interests) and notify MO within 28 days if not already registered in Register of Members' Interests
- Member may **speak on matter if the public can** but otherwise must not:
 - ❖ participate/participate further in any discussion on matter
 - ❖ participate in any vote
 - ❖ and must withdraw from the meeting room whilst the discussion or vote takes place

UNLESS have **dispensation** from Standards Committee or MO

Similar provisions for **individual Member** decision takers with DPI/ORI/NRI. Member may not take any steps/further steps in relation to matter except to transfer matter elsewhere.

Disclosure of NRIs at meetings

- if a Member:
 - ❖ is present at a meeting and
 - ❖ a matter arises which **directly relates** to their **financial interest** or **wellbeing** (and is not a DPI or ORI) or that of a **relative** or **close associate** (of which the Member could reasonably be expected to be aware)
 - Member must **disclose** existence and nature of interest to meeting (subject to provisions re sensitive interests)
 - Member may **speak** on matter if the public can but otherwise must not:
 - ❖ participate in any discussion on matter
 - ❖ participate in any vote
 - ❖ and must withdraw from the meeting room whilst the discussion or vote takes place
- UNLESS s/he has a **dispensation** from Standards Committee or MO
- HOWEVER if the matter only **“affects”** financial interests/wellbeing, then a Member may still be able to participate ...

Disclosure of NRIs at meetings (2)

- if a Member is present at a meeting and
 - ❖ a matter arises which **affects** their **financial interest or wellbeing** (and is not a DPI or ORI) or that of a **relative or close associate or an ORI body** (of which the Member could reasonably be expected to be aware)
- Member must **disclose** existence and nature of interest to meeting (subject to provisions re sensitive interests)
- Consider following **test** to see if Member can participate:
- Where a matter **affects** the **financial interest/wellbeing more** than it affects that of the majority of inhabitants of the ward affected **AND** a **reasonable member of the public** knowing all the facts would believe it would **affect the Member's view** of the wider public interest then the Member may **speak if the public can** but must otherwise take no part in the discussion or vote and must leave the meeting room **UNLESS** s/he has a **dispensation** from Standards Committee or MO
- **HOWEVER** where the matter does **not** so affect financial interest/wellbeing, then Member can **speak and vote in the usual way**

Sensitive Interests

- **an interest** (whether or not a DPI) where the Member and MO consider that *disclosure of the details could lead to the Member, or a person connected with the Member, being subject to violence or intimidation:*
 - if the interest is entered in the Register, copies of the Register which are available for inspection and published must not include details of the interest (but may state that the Member has an interest the details of which are withheld under section 32(2))
 - if the Member needs to declare a sensitive interest to a meeting (and the interest is not registered in the Register), s/he need only disclose the fact that s/he has a DPI in the matter concerned (not the details)

Participation re Interests

Interest	Covers	Register in Register of Interests?	Declare at meetings?	Speak?	Discuss and vote?	Able to apply for Dispensation?
<p>Disclosable Pecuniary Interest (DPI) (self and partner)</p>	<p>Employment, office, trade, profession, vocation Sponsorship Contracts Land Licences Corporate tenancies Securities</p>	Yes	<p>Yes (existence and nature)* WHERE you have a DPI directly relating to any matter being considered at a meeting.</p>	<p>No leave the meeting room (subject to any dispensation)</p>	<p>No leave the meeting room (subject to any dispensation)</p>	<p>Yes (by law)</p>
<p>Other Registrable Interests (ORIs) (self only)</p>	<p>1. Unpaid directorships 2. Any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority 3. Any body: i. exercising functions of a public nature ii. directed to charitable purposes or iii. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union/professional association) of which you are a member or in a position of general control or management.</p>	Yes	<p>Yes (existence and nature)* WHERE a matter arises at a meeting which directly relates to the financial interest or wellbeing of one of the ORIs.</p>	<p>Yes IF the public can</p>	<p>No leave the meeting room</p>	<p>Yes (by local choice)</p>

Participation re Interests (2)

Interest	Covers	Register in Register of Interests?	Declare at meetings?	Speak?	Discuss and vote?	Able to apply for Dispensation?
Non-Registrable Interests (NRIs) (self and others)	Interests other than DPIs and ORIs:- (i) which directly relate to the Member's financial interest or well-being, or that of a relative or close associate (of which the Member could reasonably be expected to be aware); (ii) which affect the Member's financial interest or well-being or that of a relative or close associate or of a body included under Other Registrable Interests (of which the Member could reasonably be expected to be aware).	No (by very nature)	Yes (existence and nature)*	Yes IF the public can	No leave the meeting room	Yes (by local choice)
		No (by very nature)	Yes (existence and nature)*	TEST: Where the matter affects the financial interest or wellbeing more than it affects that of the majority of inhabitants of the ward affected and 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, then can SPEAK if the public can , but must not take part in any discussion/vote and must leave room;	See Test No leave the meeting room	Yes (by local choice)
				Where the matter does <u>not</u> so affect the financial interest or wellbeing, then the Member may SPEAK AND VOTE in usual way.	Yes	N/A

Dispensations

- Power to grant dispensations delegated to Standards Committee, upon written request to MO (Max period - four years).
- Default power delegated to MO in consultation with IP and available SC Members
- Dispensations can be granted to enable a Member with an interest to participate in discussion and/or vote only if, after having had regard to all relevant circumstances, the authority—
 - considers that without the dispensation the **number** of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
 - considers that without the dispensation the **representation** of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
 - considers that granting the dispensation is **in the interests of persons living in the authority's area,**
 - that without the dispensation **each** member of the authority's **Executive** would be prohibited from participating in any particular business to be transacted by the Executive, or
 - considers that it is **otherwise appropriate** to grant a dispensation.

Offences

- Member commits a **criminal offence** if, **without reasonable excuse**, they —
 - fail to comply with obligations to:
 - ❖ notify MO of disclosable pecuniary interests (DPI)
 - ❖ disclose a DPI to a meeting
 - ❖ notify MO of a DPI disclosed to a meeting
 - participate in any discussion or vote where prohibited
 - an individual Member decision taker takes any steps in relation to a matter where prohibited
- Member commits an offence if, in relation to the registration/disclosure of interests, s/he provides information that is false or misleading and —
 - knows that the information is false or misleading, or
 - is reckless as to whether the information is true and not misleading
- a person who is guilty of an offence under this section is liable on summary conviction to a fine not exceeding £5,000
- court may also disqualify the person (for up to five years) from being a member/co-opted member of the authority or any other relevant authority

Standards Committee

- Politically balanced;
- Five Members, meeting twice per annum (or as required);
- **Independent Persons** – consulted on all key matters, complaints and invited to all Standards Committee meetings
- Hearings Panel (SC Sub-Committee) - three Members from the Committee;
- **Promotion** of high ethical standards within the Authority;
- Role re vexatious complainants;
- Consider **dispensations** to Members.

Complaint Handling

- a relevant authority other than a parish council must have in place:
 - (a) **arrangements** under which written allegations of a breach of the Code can be **investigated**, and
 - (b) arrangements under which decisions on **allegations** can be made
- such arrangements must include provision for the appointment by the authority of at least one **independent person** —
 - (a) whose views **must** be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and
 - (b) whose views **may** be sought —
 - (i) by the authority in relation to an allegation not being investigated
 - (ii) by a subject Member or subject co-opted member

NYCC has appointed two IPs, to be consulted on a rota basis where possible. Consulted on all key matters and invited to all meetings of Standards Committee.

Detailed qualification criteria to ensure the IPs are truly independent of the Authority.

Complaint Handling (2)

- NYCC **arrangements** (Sections 28(6) and (7) Localism Act 2011) – [Councillors' code of conduct | North Yorkshire County Council](#)
- Simplified complaint handling process:
 - Initial assessment by MO in consultation with IP
 - MO decides whether investigation or any other action required. If no action to be taken, matter is at end – no right of appeal for complainant.
 - If referred for investigation, and potential breach found, ultimately a panel of 3 Members from Standards Committee hears complaint.
 - No right of appeal.
- enable the filtering out of vexatious and trivial matters
- misunderstandings can be dealt with swiftly and effectively
- if Panel finds that a Member has failed to comply with the Code it may have regard to the failure in deciding whether to take action and, if so, what.

Jurisdiction and Assessment Criteria

- Purpose of initial assessment is to decide whether a complaint merits formal investigation or any other action
- Before assessment of a complaint begins, the MO, in consultation with the IP, should be satisfied that the complaint meets the following tests:

Jurisdiction

1. it is a complaint against one or more named Members/voting co-opted Members (“Members”) of the authority;
2. the named Member was in office at the time of the alleged conduct and the Code of Conduct was in force at the time.
3. the complaint, if proven, would be a breach of the Code under which the Member was operating at the time of the alleged misconduct.

If the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint

Assessment Criteria

- All complaints falling within the jurisdiction of the standards regime will be assessed by the MO, in consultation with the IP, in accordance with the Assessment Criteria:
 1. Capacity
 2. Triviality
 3. Sufficient Information
 4. Current Membership
 5. Prior Investigation/Action
 6. Passage of Time
 7. Underlying Motivation
 8. Anonymous Complaints
 9. Requests for Confidentiality
 10. Withdrawal of Complaints

Conclusion of Assessment

- MO reach one of the following conclusions :
 - (a) That no action should be taken in respect of the complaint.**
 - (b) Referral of the complaint for investigation.**
 - (c) Whether to seek informal resolution of the matter.**
- Where difference of opinion between MO and IP, allegation will be investigated.
- Record decision and reasons in Assessment Record and send to parties.

Investigation

- Where complaint referred for **investigation**:
 - MO appoints **Nominated Officer** to undertake investigation
 - Nominated Officer prepares **investigation report**, copied to both parties and sent to the MO, with a **recommendation** as to whether it is considered that there has been a breach of the Code.
- Conclusion of **no breach** of Code
 - MO receive and review the report and consult IP. If MO satisfied that the report is sufficient, s/he will write to the Complainant and the subject Member notifying them that s/he is satisfied that no further action is required.

- Conclusion of **breach** of Code
 - MO will review the report and consult the IP as to whether **local resolution** may be possible without the need for a hearing.
 - If the matter can reasonably be resolved in the Monitoring Officer's opinion without the need for a hearing he/she will consult the IP, with the Complainant and Subject Member, to seek to agree a fair resolution, eg apology and/or other remedial action
 - If the Member **complies** with the suggested resolution the matter will be reported to the Standards Committee but **no further action** will be taken.
 - If any suggested resolution is not agreed, the matter will be referred to the **Standards Committee** for consideration.

Hearings

- If local resolution is not appropriate or fails, the investigation report goes to a **Hearings Panel** of 3 Members from the Standards Committee.
- Panel meets to decide whether the Subject Member has failed to comply with the Code and, if so, whether to take any action.
- IP will attend and be consulted
- Panel may conclude:
 - (a) that the Member **did not fail to comply with the Code** of Conduct;
 - (b) that the Member **did fail to comply with the Code** of Conduct; and, if it so concludes, the Panel may determine whether any action is necessary and, if so, what sanction is appropriate.

The Panel may:

- issue a letter of **censure** to the Member
- require an **apology** to be given to the Complainant;
- recommend to the Member's Group Leader that he/she be **removed** from any or all **committees** or sub-committees of the Council;
- instruct the Monitoring Officer to arrange **training** for the Member.

No power to suspend or disqualify or to withdraw allowances.

Panel consults the IP and decides what, if any, **publicity** should be undertaken eg publish a notice on the Council's website or a press release.

MO prepares a **Decision Notice** which will be given to the Subject Member and the Complainant within 10 working days.

No right of appeal.

Complainant may make complaint to the Local Government Ombudsman.

Bias and Predetermination

- Irrespective of whether something is Code issue, always bear in mind rules relating to bias and predetermination.
- Localism Act 2011 - statutory clarification of common law rules:
 - ensures that councillors can freely discuss issues, including expressing a view and/or campaigning on an issue, and then later speak or vote on those issues.
 - reflects the current common law position that such matters would amount to **predisposition** (*having and expressing an open-minded view, provided the member is prepared to reconsider their position in the light of all the evidence and arguments*) rather than predetermination
- **Predetermination** occurs *where a fair minded and well informed observer, looking objectively at all the circumstances, considers there is a real risk that a decision maker has refused to consider a relevant argument or would refuse.*

Bias

- Examples:
 - connection with someone affected by a decision
 - improper involvement of someone with an interest in the outcome
 - prior involvement
 - commenting before a decision is made

Risk that decision maker does not approach the decision with an objective, open mind – may render decision vulnerable to challenge

Summary

“Councillors are likely to have and are entitled to have a disposition in favour of particular decisions – *“an open mind is not an empty mind but it is ajar”*”

Unless there is positive evidence of a closed mind, prior observations or apparent favouring of a particular decision is unlikely to suffice as predetermination

Members are entitled to have and express their own views, as long as they are prepared to reconsider their position in the light of all the evidence and arguments. They must not give the impression that their mind is closed.