

NORTH YORKSHIRE COUNTY COUNCIL

STANDARDS COMMITTEE

4 March 2021

New voluntary Model Code of Conduct for Members

1.0 PURPOSE OF REPORT

- 1.1 To present to Members the new voluntary model Code of Conduct for Members and to request the Committee to determine whether the new model Code should be recommended for adoption by the Council or whether any amendments to the Council's current Code of Conduct for Members in light of the new model should be recommended to full Council for approval.

2.0 BACKGROUND

- 2.1 The Committee has previously responded to the Local Government Association (LGA) consultation on a new draft model Code of Conduct for Members.
- 2.2 The LGA published a new (voluntary) model Code of Conduct for Members on 3 December 2020. A copy was circulated by the Monitoring Officer to Standards Committee Members and the Independent Persons for Standards. It appears a second version of the model was published on 19 January 2021 and a copy is attached at **Appendix 1** to this report for ease of reference. Further information is available on the LGA website at <https://www.local.gov.uk/local-government-association-model-councillor-code-conduct-2020-0>
- 2.3 A copy of the Council's current Code of Conduct for Members is attached at **Appendix 2** to this report.
- 2.4 The new model Code is voluntary and local authorities are able to adopt the model in its entirety or not at all, or adapt it to suit their local circumstances so there is plenty of scope for the Standards Committee to make the recommendations, if any, it deems appropriate for the Council in the future.
- 2.5 Members are therefore requested to determine whether the new model Code, or any part of it, should be recommended for adoption by the Council; whether any amendments to the Council's current Code of Conduct for Members in light of the new model should be recommended to full Council for approval or whether the current Code is preferred in its present terms. Specific areas for particular consideration have been highlighted in this report, however the entirety of the model Code should be considered against the Council's current Code.
- 2.6 The LGA has undertaken this review and published the new model Code in advance of a response from the Government regarding the recommendations made by the Committee on Standards in Public Life (CSPL) in their report on Local Government Ethical Standards. Should any of the recommendations be implemented this may necessitate a change to this model Code. The LGA has stated it will review the model Code on an annual basis.

3.0 **NEW MODEL CODE OF CONDUCT FOR MEMBERS**

3.1 The new model Code sets out a **Joint Statement** written in the first person and an Introduction written in the third. The Council's current Code contains a briefer introduction, tailored to the Council. The model Code introduction references "this Model Councillor Code of Conduct" and talks about the development of the model Code which Members may feel would not be relevant to the specific Code for the Council. ***Members are requested to consider whether the additional detail in these introductory parts of the model Code is actually required for the Council's Code.***

3.2 On comparing the new model Code with the Council's current Code of Conduct for Members, it can be seen that there are similar provisions covering areas such as:

a) The **Definitions** section in the model Code is wider than the Council's, where any terms requiring definition are defined at the relevant time. It is recommended however that the Council's current Code is sufficient in this regard as it defines those issues pertinent to the Council as a county council and there seems little point including a paragraph about the application of the Code to other types of authority. ***Members are requested to consider whether any further definitions should be included in the Council's Code.***

b) **Purpose of the Code:** the model Code contains a specific purpose section however it is suggested that this is adequately covered by the Council's current Code in its very first paragraph. Much of the model Code appears to contain detail that may be better placed in a supporting guidance document (anticipated from the LGA) to distinguish it from the actual requirements of the Code.

c) **General Principles of Councillor Conduct:** this section of the model Code references the Seven Principles of Public Life, which are already appended to the Council's current Code. The Council's Code specifically requires, in its third paragraph, compliance with the General Principles of Public Life. The model Code attempts to build on these principles and sets out unequivocal statements for Members to abide by however these are, in essence, repetitive of the later General Conduct section of the model Code. ***Members are requested to consider whether such additional requirements are necessary for the Council's Code*** and, if so, whether the statements should be re-phrased in terms of using best endeavours rather than definitive statements such as "I avoid conflicts of interests" when a Member may not realise they are in one until later on.

d) **Application of the Code:**

i. The first paragraph of the model Code is already covered in the Council's current Code regarding the timing of the application of the Code (on signing the Undertaking to comply with the Code which is incorporated in the Declaration of Acceptance of Office).

ii. The model Code seeks to extend the scope of the Code to cover actions of Members when they misuse their position as a councillor and when their actions would give the impression to a reasonable member of the public, with knowledge of all the facts, that they are acting as a councillor. The Localism Act 2011, under which the ethical framework (including the code of conduct) is established only applies to Members when they are acting in the capacity of a Member or voting

co-opted Member. It does not cover 'giving the impression' that they are so acting. In its response to the model code consultation the Council responded that it would be in agreement for a change to the legislation to allow some actions in Members' private capacity to be covered by the Code if it damages the reputation of the authority and that further clarification should be included in the model Code as to exactly what "public" behaviour would encompass (legislative change permitting), eg stipulating in the Code that there will be a rebuttable presumption that a Member's public behaviour (including statements on publicly accessible social media) is made in their official capacity. However there has been no change, yet, to the relevant legislation to make this permissible and ***it is recommended to Members that no change should be recommended to the Council's Code applying to Members in their official capacity only at this time.***

- iii. This section also attempts to define the types of communication and interaction which may be covered by the Code. Members may feel that, if they wish to reference such a breakdown of actions, this type of information would be better suited to a separate guidance document for Members rather than included amongst the Code's requirements and obligations against which Members would be judged on any complaint. Draft guidance in support of the new model Code is expected from the LGA. In any event it would need to be made clear that such communication and interaction applies when the Member is acting in their official capacity. As currently drafted in the model Code it implies that such actions would be covered by the Code when a Member gives the impression they are acting as a Member. This is not what the law currently provides and would require legislative change.
- iv. The final paragraph in this section of the model Code "encourages" Members to seek advice from the Monitoring Officer on the Code whereas the Council's current Code places an absolute requirement ("you must...") on Members to consult the Monitoring Officer and/or the Chief Executive Officer before disclosing any confidential information (paragraph 5 of the current Code) and to have regard to relevant advice given by the Monitoring Officer (and specified others) (paragraph 12 of the current Code). In this regard it is suggested that the Council's current Code goes further than the model Code.

e) **General conduct provisions:**

- i. This section of the model Code sets out the minimum requirements of member conduct and includes guidance to help explain the reasons for the obligations and how they should be followed. The main obligations are already covered in the Council's current code however there is sometimes a difference in emphasis for example regarding respect: in the model Code this is a positive obligation to treat others with respect however in the Council's Code the obligation is to not treat others with disrespect – this was a conscious choice of emphasis by the Council at the time of adopting its Code. ***Members are requested to consider whether they would wish to make any recommendations for change in this respect and also whether it is desirable for any or all of the guidance to be included in the Council's Code itself or in separate guidance, perhaps when the supporting guidance from the LGA is available.***
- ii. The general conduct obligations set out in the model Code cover:

1. Respect:

- This obligation is already covered in the Council's current Code although the model Code goes into further detail and includes guidance. The obligation of "civility" (rather than "respect") in the draft model Code has been removed and there has been a return to "respect", although the phrase "civil manner" is included in the guidance part of this section.
- The model Code contains a paragraph regarding Members' "right to expect respectful behaviour from the public", which is not covered in the current Code for the Council. **Members are requested to consider whether they would wish to recommend the inclusion of this or a similar paragraph in the Council's Code.**

2. Bullying, harassment and discrimination

- This obligation is covered in paragraphs 3 and 2 of the Council's current Code, but the current Code does not mention 'harassment'. The Council's Code provides that Members should not bully or intimidate any person, or attempt to do so, but does not include any wider definitions or examples as mentioned in the model Code or the relevant CSPL Best Practice recommendation. At the time of adopting its new Code and supporting ethical arrangements in 2012, the Council wished to pursue a light touch standards regime. **Members are requested to consider whether they would wish to recommend any amendments to the Council's Code in this respect and also whether it is desirable for any or all of the guidance to be included in the Council's Code itself or in separate guidance.**

3. Impartiality of officers of the council

- This obligation is covered in paragraph 4 of the Council's current Code of Conduct however paragraph 4.2 of the model Code is new but Members may feel it does not add anything new to the existing provisions of the Council's Code.

4. Confidentiality and access to information

- This obligation is covered in paragraphs 5 and 6 of the Council's current Code of Conduct.

5. Disrepute

- This obligation is covered in paragraph 7 of the Council's current Code of Conduct. Again, **Members are requested to consider whether they would wish to recommend including any of the guidance wording from the model Code.** The Monitoring Officer is concerned that some of the wording in the guidance could cause confusion, eg the sentence "For example, behaviour that is considered dishonest and/or deceitful can bring your local authority into disrepute.": it may be the case that such behaviour could reflect on the authority however unless the behaviour was undertaken by the Member in their official

capacity as a Member it will not be covered by the Code and ethical framework under the Localism Act 2011. Legislative change would be required before any conduct in a Member's private capacity could be caught by the standards regime.

6. Use of position

- This obligation is covered in paragraph 8 of the Council's current Code of Conduct.

7. Use of local authority resources and facilities

- This obligation is covered in paragraph 11 of the Council's current Code of Conduct.

8. Complying with the Code of Conduct

- This section of the model Code requires Members:
 - to undertake Code of Conduct training: this is not covered in the Council's current Code;
 - to co-operate with any standards investigation and/or determination, which also forms part of the Committee on Standards in Public Life Best Practice Recommendations: this is not covered in the Council's current Code;
 - to not intimidate/attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings: this is covered by paragraph 3 of the Council's current Code which requires Members not to bully or intimidate any person, or attempt to do so. The Council's Code therefore goes further in this respect than the model Code as the latter bars intimidation of administrators of standards investigations or proceedings which, as drafted in the Code, would not cover intimidation of others, for example the complainant and/or witnesses.
 - to comply with any sanction imposed: this is not covered in the Council's current Code;

9. Interests

- Paragraph 9.1 of the model Code sets out the requirement to register and disclose interests but mainly contains explanation and guidance rather than obligations. The detail of the model Code requirements regarding interests is set out in Appendix B to the model Code, which is discussed in more detail later in this report.

10. Gifts and hospitality

- This section of the model Code requires Members:
 - not to accept any gifts or hospitality which could give rise to real or substantive personal gain or a reasonable suspicion of influence by the Member to show favour to persons

seeking to do business with the Council or who may apply to for any permission, licence or other significant advantage: a similar provision is contained in paragraph 10 of the Council's current Code but is not as detailed. **Members are requested to consider whether they would wish to recommend any changes to the Council's current Code in this respect,**

- to register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt: the Council's current Code does not set any financial threshold for the registration of gifts and hospitality and **Members are requested to consider whether they would wish to recommend any changes to the Council's current Code in this respect,**
- to register with the Monitoring Officer any significant gift/hospitality offered but refused (however no timescale is stipulated for registering refusals): this is not currently included in the Council's current Code. **Members are requested to consider whether they would wish to recommend any changes to the Council's current Code in this respect,**

- This section of the model Code also sets out guidance in relation to gifts and hospitality for example advising that the presumption should "... always be not to accept significant gifts or hospitality..." but there is no guidance on what should be deemed "significant". Also, the guidance section states that where it is difficult to refuse a gift/hospitality, it can be accepted but must be registered: it is not clear whether this means a gift/hospitality over £50 can be accepted if it is difficult to refuse providing it is registered and in any event offers no guidance on the timescale within which it should be registered. **Members are requested to consider whether they would wish to recommend any amendments to the Council's Code in this respect.**

f) Appendix A – The Seven Principles of Public Life: This is already appended to the Council's current Code.

g) Appendix B - Registering interests:

- i. This Appendix covers the registration and declaration of interests.

Registration of interests

- The model Code requires the registration of Disclosable Pecuniary Interests and Other Registerable Interests as set out in Tables 1 and 2, and any changes to interests, within 28 days. The Council's current Code contains these stipulations.
- The model Code provisions re "sensitive interests" and definition of "partners" are already covered in the Council's current Code.
- Table 1: Disclosable Pecuniary Interests: this table sets out the statutory definitions and explanations of Disclosable Pecuniary

Interests (as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012). This is already included in Appendix 1 of the Council's current Code. Members will see that in addition, in the model Code has included "[Any unpaid directorship.]" in the description column of the Disclosable Pecuniary Interest relating to 'Employment, office, trade, profession or vocation' – Members should note that contrary to what is stated in the model Code, unpaid directorships are not specified in the Regulations and would seem to conflict with the spirit of this category of interest which relates to positions held for profit or gain.

- Table 2: Other Registrable Interests: the model Code sets out that in addition to the statutory DPIs, Members should register:
 - any body of which they are in general control or management and to which they are nominated or appointed by their authority; and
 - any body (i) exercising functions of a public nature (ii) any body 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)

At the time of adopting the Council's current Code of Conduct in 2012, the Council wished to introduce a light touch standards regime and the Code was drafted and adopted on that basis, requiring Members to register only the statutory DPIs. The Council's Code was later amended, in accordance with government guidance, to include a requirement for Members to register their membership of any trade union or professional association (see Appendix 2 of the Council's current Code). The Council's Code would only require Members to register membership of public and charitable bodies if they hold the position for profit or gain. ***Members are requested to consider whether they would wish to extend the registration of interests regime any further, as set out in the model Code.***

Declaration of interests and participation

- The interests regime set out in the model Code is essentially reverting to the old personal and prejudicial interests' type split system under the old ethical framework, with different tests depending on the nature of the interest. It is a more detailed and potentially challenging interests regime than currently provided for in the Council's Code.
- The model Code requires that:
 - in relation to Disclosable Pecuniary Interests, Members must declare the interest (but not the detail of any sensitive interests), must not participate or vote in the matter and must leave the room (subject to any dispensation granted). This is almost identical to the Council's current Code, except that the Council's Code reflects the statutory wording, which does not actually require the declaration of the interest to the meeting unless it is not already registered in the Members' interests form. In practice within the Council, Members are advised to declare the interest to the meeting (even if they have a

dispensation) in the interests of transparency. **Members are requested to consider whether they wish to recommend the formal inclusion of a requirement to declare the existence of a disclosable pecuniary interest to the meeting in any event.** The model Code contains provisions around Disclosable Pecuniary Interests in matters considered by a single Member which are already covered in the Council's current Code.

- in relation to Other Registrable Interests, Member must declare the interest (but not the detail of any sensitive interests). Members may only speak on the matter if the public are allowed to speak, otherwise they must not participate in the discussion or vote and must leave the room (subject to any dispensation granted). This is not currently included in the Council's existing Code, although Members are required by the Council's Code to bear in mind the rules relating to bias and predetermination and must not participate in, or seek to influence, Council business where their interests may prejudice, or appear to prejudice, their views (paragraph 16A(4) of the Council's Code).
- in relation to Non-Disclosable Pecuniary Interests:
 - where a matter arises at a meeting which *directly relates* to a Member's financial interest or well-being (and is not a Disclosable Pecuniary Interest) or that of a relative or close associate, the Member must disclose the interest (but not the detail of any sensitive interests). Members may only speak on the matter if the public are allowed to speak, otherwise they must not participate in the discussion or vote and must leave the room (subject to any dispensation granted).
 - where a matter arises at a meeting which *affects*:
 - a Members' own financial interest or well-being;
 - a financial interest or the well-being of a relative or close associate; or
 - a body included in the Other Registrable Interests section of the Member's interests form

the Member must disclose the interest. They must consider the following test to determine whether they can remain and participate in the meeting:

Where the matter affects the financial interest or well-being:

- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. 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

the Member may only speak on the matter if members of the public are also allowed to speak at the meeting, otherwise they must not take part in any discussion or

vote on the matter and must not remain in the room (unless granted a dispensation).

Members are requested to consider whether they would wish to recommend the model Code's interests regime or any parts of it or any amendments to the Council's current interests regime to the Council.

h) **Appendix C – the Committee on Standards in Public Life:** this section references the report of the CSPL re Local Government Ethical Standards and sets out the CSPL's best practice recommendations. It is suggested that it would not be necessary to include this Appendix in the Council's Code, which should focus on setting specific obligations by which Members should abide.

3.3 The Model Code does not reference the potential criminal offences for breach of the interests regime. This is covered by the Council's Code.

4.0 CONCLUSION

4.1 The Committee is requested to review the Council's current Code of Conduct for Members in light of the new model Code to determine whether it wishes to recommend to full Council the adoption of the new model or any amendments to the current Code in light of the new model.

4.2 It should be noted that by making the new model Code voluntary, it is unlikely to achieve its aim of standardisation across all authorities for dual hatted Members, as authorities will not necessarily be minded to take the same approach for their respective Codes of Conduct. The Monitoring Officer is making enquiries of neighbouring authorities as to the approach they are taking to the new model Code and Members will be kept updated.

5.0 RECOMMENDATIONS

5.1 That the Committee notes the contents of this report and considers the new voluntary model Code of Conduct for Members.

5.2 That the Committee determines whether or not the new model Code should be recommended for adoption by the Council or whether any amendments to the Council's current Code of Conduct for Members in light of the new model should be recommended to full Council for approval.

5.3 That the Committee considers whether there are any other steps it would wish to take or recommend to the Council regarding the Council's current Code of Conduct for Members and supporting ethical framework.

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Background Papers: None

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