

MEMBER CONDUCT COMMITTEE – 13TH DECEMBER 2021

Report of the Monitoring Officer

ITEM MEMBER CODE OF CONDUCT - UPDATE

Purpose of Report

To enable the Committee to consider potential options in respect of the Member Code of Conduct.

Recommendation

That the Committee considers the issues set out in this report and determine which of the following options they wish to pursue:

- (a) Retain the current Member Code of Conduct, or
- (b) Recommend to full Council that the amended Code of Conduct developed by a group of Leicestershire Monitoring Officers and adopted by Leicestershire County Council and based on the LGA national Code of Conduct should be adopted.

Reason

To determine which option for a Members' Code of Conduct the Committee considers to be most suitable.

Policy Justification and Previous Decisions

The Localism Act 2011 requires that the Council must adopt a Code of Conduct which is consistent with the Nolan principles of public life, and which contains provisions relating to the registration and disclosure of pecuniary interests and other interests.

A common Members' Code of Conduct shared by Leicestershire County Council and several of the other principal authorities in Leicestershire, was approved by full Council June 2013 and came into effect on 1st September 2013 (Minute No 18.4 2013/14 refers).

The Committee considered the options regarding the LGA Code of Conduct at its meeting on 20th September 2021 and resolved to defer any decision until further information became available regarding the County Council's intentions (minute 17.1 2021/22 refers).

Implementation Timetable including Future Decisions

If the Committee decide to recommend the adoption of an alternative Code of Conduct, this will be considered at the next available full Council meeting.

Report Implications

The following implications have been identified for this report.

Financial Implications

None

Risk Management

No risks have been identified with this item.

Background Papers: LGA guidance on their model Code of Conduct:
<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>

Appendices: Appendix A – Adapted LGA Code of Conduct

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Part B

Background

1. Charnwood Borough Council has adopted a common Members' Code of Conduct shared by Leicestershire County Council and several of the other principal authorities in Leicestershire. The aim of the Code is to promote joint high standards of conduct and minimise the potential for confusion, particularly for those councillors who may be Members of more than one local authority. The current Code came into effect on 1st September 2013.
2. The LGA published their national Model Code of Conduct on 23rd December 2020 following extensive consultation with the sector. The LGA have also produced some guidance notes to support their Code of Conduct, which have been referenced as a background paper to this report.
3. A group of Leicestershire monitoring officers has reviewed the LGA Code and have made some suggested amendments which are designed to make it clearer to understand and to apply in practice.
4. The locally amended version is attached as Appendix A. This is the version which has been recommended for adoption by Leicestershire County Council, and it has been completed to be applicable to Charnwood Borough Council.

Factors to Consider

5. The amended LGA Code has some differences from the current Code, which are summarised below.
6. General
 - (a) The application of the Code is expressed to apply 'when you are acting or are claiming to act in your capacity as a councillor'. This may include when you misuse your position as a councillor, or your actions give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor.
 - (b) The section on behaviours is largely as per the current Code, except that it has been redrafted by the LGA to be expressed in the first person rather than the third person.
 - (c) There is a new section requiring members to cooperate with an investigation and confirming that members will comply with any sanction imposed. Failing to do so would therefore be a breach of the Code in itself.
7. Interests

The section on interests contains the most differences from the current Code. The amended LGA Code refers to three types of interest as follows:

- (a) **Disclosable Pecuniary Interests ('DPIs')** - DPIs were introduced by s30 of the Localism Act 2011. They are a category of interests which relate to the member and/or their partner, such as financial interests of you or your partner, such as your house or other property, or if you have a job or own a business. The categories are set out in regulations made under the Act and knowing noncompliance is a criminal offence.
- (b) **Other registrable interests** - These are categories of interest which have been identified by the LGA as requiring registration as an aid to transparency. These relate to:
- Details of any body of which you are a member or in a position of general control or management and to which you are appointed by your local authority.
 - Details of any body of which you are a member or in a position of general control or management and which exercises functions of a public nature, is directed to charitable purposes, or has the principal purpose of influencing public opinion or policy.
 - Details of any gifts or hospitality with an estimated value of more than £50 received in connection with your official duties.
- These interests are personal to you only and do not apply to your spouse / partner etc.
- (c) **Non-registrable interests** - These are your own interests or those of your family/relatives/close associates etc. which are not required to be registered but will need to be declared as and when they arise.

8. Declarations at Meetings

The requirements to declare an interest at a meeting are as follows:

- (a) **DPIs** - Where you have a Disclosable Pecuniary Interest in any matter to be considered at a meeting you must disclose the interest, not participate in any discussion or vote on the matter and you must not remain in the room unless you have been granted a dispensation.
- (b) **Other Registrable Interests** - Where a matter arises at a meeting which directly relates to the financial interest or wellbeing of one of your Other Registerable Interests, you must disclose that interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting, but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. Where a matter simply affects such an interest, then the test detailed in paragraph (c) below applies.
- (c) **Non-registrable interests** –
- Where a matter arises at a meeting which directly relates to your financial interest or well-being or a financial interest or well-being of a relative or close associate, you must disclose the interest. You may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise, you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

- Where a matter arises at a meeting which affects your own financial interest or well-being, a financial interest or well-being of a relative or close associate, or a financial interest or wellbeing of a body included under Other Registrable Interests, you must disclose the interest. In order to determine whether you can remain in the meeting after disclosing that interest the following test should be applied:

The test

Where a matter affects a financial interest or well-being: (i) to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and; (ii) a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest; you may speak on the matter only if members of the public are also allowed to speak at the meeting. Otherwise, you must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. There are various allowances for sensitive interests etc.

9. The table below is extracted from the LGA guidance to assist in understanding how the various interests would apply in practice:

| No. | TYPE | SPEAK | VOTE | STAY | EXAMPLES | COMMENTS |
|------------|-------------|----------------------|-------------|-------------|---|--|
| 1. | DPI | No | No | No | Awarding a contract to your own company Planning application for your own property | <i>Directly relates to DPI – foreseeable, narrow, criminal</i> |
| 2a. | ORI | If public allowed to | No | No | Awarding a grant to a body where you are a member e.g., village hall Granting planning permission to a body where you are a member | <i>Directly relates to finances – foreseeable, narrow, can address meeting if public can do, but not take part in discussion</i> |
| 2b. | ORI | Test | Test | Test | Awarding grant funding to a body other than the body of which you are a member e.g., competitor to village hall | <i>Affects finances or well-being test (1) greater than the majority of inhabitants and (2) reasonable public-affect view of public interest</i> |

| | | | | | | |
|---------|-----|----------------------|------|------|---|--|
| 3a. | NRI | If public allowed to | No | No | Determining a planning application made by your sister Objecting in a private capacity to a neighbour's planning application | <i>Directly relates to finances of you, your partner (not a DPI) – a relative / close associate. Unforeseeable – can address the meeting if public can but not take part in the discussion</i> |
| 3b. | NRI | Test | Test | Test | Application for housing development on land near to partner's business property Your neighbour applies for planning permission | <i>Affects finances or well-being test (1) greater than majority of inhabitants and (2) reasonable public-affect, view of public interest</i> |
| 2b / 3b | NRI | Test | Test | Test | ASB from rough-sleepers housed in B&B's nearby | <i>May not affect finances but well-being = quality of life – apply stage 2 test</i> |

Dispensations

10. The current Code specifies that '*To enable you to participate and vote on a matter in which you have a Disclosable Pecuniary Interest or a Personal Interest that might lead to bias, the Member Conduct Committee may grant you a dispensation in accordance with rules and procedures established by the Authority*'.
11. The LGA Code instead gives responsibility for granting dispensations to the Monitoring Officer. In practice it would probably not be possible to convene a meeting of the Member Conduct Committee quickly enough to deal with a request for a dispensation, so this seems to be a practical solution. For information, we have never received a request for a dispensation.

Conclusion

12. It is for the Member Conduct Committee to carefully consider the options available:
 - a. Retain the current Member Code of Conduct
 - b. Recommend to full Council that the amended Code of Conduct developed by a group of Leicestershire Monitoring Officers and based in the LGA national Code of Conduct should be adopted.
13. Leicestershire County Council have adopted the locally amended LGA Code, and therefore it may be beneficial for 'dual-hatted' members for Charnwood Borough Council to also adopt the amended LGA Code.
14. However, the amended Code has some differences to the current Code. In particular:
 - It makes training on the Code of Conduct compulsory for all members,
 - It makes compliance with any sanctions compulsory. Therefore, failing to comply with a sanction, such as making an apology if instructed to, would become a breach of the Code in itself,
 - The categories of interests are different to the current Code, as are the requirements for declaring and acting upon such interests where they apply. These requirements are potentially more complex and difficult to understand than those in the current Code.