

AUDIT COMMITTEE	AGENDA ITEM NO. 7
22 SEPTEMBER 2014	PUBLIC REPORT

Contact Officer(s):	Philip McCourt, Interim Head of Legal and Governance Services	Tel. 452576
---------------------	---	-------------

THE CODE OF CONDUCT FOR MEMBERS AND CONDUCT ARRANGEMENTS

R E C O M M E N D A T I O N S	
FROM :	CODE OF CONDUCT REVIEW WORKING GROUP: Cllrs Murphy, Sandford and Thacker (Apologies received from Cllr Fletcher)
It is recommended that Audit Committee:	
<ol style="list-style-type: none"> 1. Recommends to Council that a revised Code of Conduct be adopted, in that <ol style="list-style-type: none"> a. Part 1 of the Code (general conduct) should be deleted and replaced with the wording from the Local Government Association template Code; b. the revised description of the Principles of Conduct in Public Life are incorporated within the Code; and c. Part 2 of the Code (interests) remain unchanged as attached at Appendix A. 2. That enhanced training concerning the common law on interests and bias be offered to all Councillors. 3. It be noted that the Group also recommended that the revised wording of the Integrity Principle is incorporated into Council Standing Orders, which is now the case. 	

1. ORIGIN OF REPORT

- 1.1 This Code of Conduct Review Working Group met on several occasions between August 2013 and March 2014 to consider the operation of the Council's standards and conduct arrangements for councillors up to that point.

The Code of Conduct for Members and Conduct Arrangements report is to be considered by the Audit Committee in line with its terms of reference 2.2.1.21 Assisting the Council on the adoption or revision of the Code of Conduct.

2. PURPOSE AND REASON FOR REPORT

- 2.1 The Council had operated under the revised standards regime established under the Localism Act 2011 in July 2013. Like most authorities, the adoption of a revised code of conduct was introduced in a relatively short time-frame and in collaboration with other authorities, in this case with the councils in Cambridgeshire.
- 2.2 One year on, the opportunity arose to re-consider the effectiveness of this Code and the operation of the new standards arrangements, leading to the establishment of the Working Group of Members of the Committee.

3. ISSUES AND BACKGROUND

- 3.1 The Localism Act 2011 did away with the previous Local Government Act 2000 regime, itself a radical departure from what went before. The post 2000 Act regime consisted of a mandatory code of conduct and register of interests, prescribed investigation procedures, sanctions provisions that allowed for up to suspension locally and disbarment from being a councillor by a national Tribunal, and oversight by a government agency called Standards for England.
- 3.2 Instead, councils must now have a code of conduct but are free to draft it in whatever form is wished provided that, when viewed as a whole, it is consistent with the seven principles of public life (sometimes known as the Nolan Principles as purported by Lord Nolan as then Chair of the Committee on Standards in Public Life).
- 3.3 Similarly, councils are free to define what interests must be registered and how Members are to act when a conflict of interest arises, provided that there is a minimum standard set by the introduction of 'disclosable pecuniary interests' (known as DPI's), differentiated from 'other interests'. Failure to abide by the registration of other interests or acting on a conflict of interests is a matter for the local Code, but failure to comply with the DPI provisions was made a criminal offence.
- 3.4 There was no replacement the Standards (Board) for England body nor for sanctions beyond the DPI criminal provisions. In terms of dealing with complaints about a Member, however, councils are required to have local arrangements in place under which allegations can be investigated, and under which decisions on allegations can be made. These arrangements must include the involvement of an 'independent person' to provide his or her views to the authority.
- 3.5 By contrast, Scotland and Wales continue with their pre-existing systems, with complaints casework undertaken entirely by a central body. The mandatory Welsh Code is similar to the pre-existing English code. The mandatory Scottish Code is more detailed and is similar to the national code that existed across local government before 2000.
- 3.6 In drafting their codes of conduct, three template codes were made available to councils. The pre-existing general provisions of the previously mandatory code, a template produced by the Local Government Association (LGA) and an indicative code produced by the Department for Communities and Local Government (DCLG). Alongside these was also a code drafted specifically for parish councils and promoted by the National Association of Local Councils (NALC).
- 3.7 From what research is available, approximately half of all councils that adopted one of these three codes re-adopted the previous code's general provisions, a third adopted the LGA template and the remaining seventh the indicative DCLG code. A number of other councils produced a bespoke code, but largely as a variation of the above.
- 3.8 In terms of interests, the pre-existing code was designed to reflect the common law rules on bias in decision making. The theory was that including this better spelt out what bias may look like and placed responsibility for actions on the individual councillors. It is for this reason that most councils appear to have continued to reflect this in their new Code.
- 3.9 The opposing view was that the law changes and these decisions on bias are best left to the courts and the corporate body as advised of best practice at the time. Added to this was the view that the practice of having, in effect, two similar but different standards to operate by (the common-law and the code), is both confusing and, in the case of the constriction of the 'personal interest' and 'prejudicial interest' tests, distracting and overly restrictive.
- 3.10 In moving to a localist approach Parliament nonetheless recognised that there were some interests that were so clear and disruptive to ethical and proper decision making that they should be dealt with beyond any Code and be treated as a criminal offence.

- 3.11 Peterborough City Council adopted a code made up of general provisions, largely the same as the previous code and drafted in partnership with the councils of Cambridgeshire. The Council's Code includes provisions on DPI and one 'other interest' in relation to gifts and hospitality. It is otherwise silent on other kinds of interests or acting unregistered interests and, in preference, relies on the common law on decision making to advise the authority and its Members.
- 3.12 In terms of arrangements, most councils adopted a process whereby initial decisions to investigate or not was delegated to the monitoring officer, with involvement of the independent person being either required or a matter of choice at that stage, and decisions being made before a panel of Members from a standards committee or a wider remit audit or governance committee (as is the case at Peterborough).

4. **SUBSEQUENT CHANGES**

- 4.1. Following the introduction of the Act and the Code and arrangements by the Council, two changes have taken place.
- 4.2. The first is that Committee on Standards in Public Life (CSPL) continues in its role, which is to advise the Prime Minister on ethical standards across the whole of public life in the UK. Its fourteenth report was issued in January 2013, which was undertaken as "*A review of best practice in promoting good behaviour in public life*". The key outcome from this for local government was the revision of the description applied to the seven principles. The updated principles are included in the attached **Appendix A**.
- 4.3. Subsequently, the Government produced a guidance document for councillors on personal interests, which was updated and re-issued in March 2013 to recognise the revised descriptions to the principles, with a further minor amendment made in September 2014. Entitled "*Openness and transparency on personal interests - A guide for councillors*", the document is intended to give basic practical information about how to be open and transparent about one's personal interests. This can be found on the DCLG website or directly at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/240134/Openness_and_transparency_on_personal_interests.pdf

5. **CONSIDERATIONS OF THE GROUP**

- 5.1 The Group received a number of background and information reports concerning the history and background to conduct matters and the options open to the Council, which are summarised above. The Group split its considerations into three parts.

6. **General Provisions of the Code**

- 6.1. The Review Working Group looked at alternatively drafted codes, including the Parliamentary Members Code of Conduct. In doing so, Members asked themselves whether the general part of the code:
- a. was fit for purpose in explaining to Members what behaviours are expected of them; or
 - b. was clear enough to:
 - i. guide Members away from specific unacceptable behaviours; and
 - ii. hold Members to account if they fall short of those expected behaviours?
- 6.2. Members considered this over a number of meetings. In essence, Members considered the arguments as being as follows:

- a. The existing Code was well understood. The main core of requirements had been in place since 2000, it was relatively clear in its requirements and Members had had training on it going back several years. Its style, however, was not welcomed by all. Being set out as a list of requirements, which told Members what they could or could not do was, by some, considered to “treat councillors as schoolchildren”.
 - b. The LGA template was felt to differ from this as it attempted to move away from a list of ‘do’s and don’ts’ to be briefer and more purposive. It sets out the behaviours expected in the form of promissory statements of purpose and intent, in a positive manner. In addition it sets these out on one side of A4.
 - c. The DCLG indicative code was, in essence, simply a straight repetition of the seven principles. It was felt that this was improved with the revised descriptors issued by the CSPL, but that it remained otherwise wholly inadequate.
- 6.3. There was also discussion over the amount of information that should be included in a code. It was recognised that the more detailed a code became the more likely the risk was that there would be loopholes and technicalities, which could create the perverse situation that the investigations and decisions are about the wording of the Code rather than addressing the cause and effect of unethical or improper behaviours. Equally, a code that is too vague does not provide sufficient guidance or level of understanding for Members to be able to follow in a fair and just manner. Of the three codes, the LGA template was considered to strike the better balance between the two extremes.
- 6.4. The Review Group therefore settled, after much discussion, on recommending a move to the LGA template, as attached at **Appendix A**, as a preferred approach to standards of conduct by elected or co-opted members of the Council.

7. Interest Provisions of the Code

- 7.1. The second part of the Code concerns itself with Member interests and is split into Disclosable Pecuniary Interests and Other Interests to register and declare as required here.
- 7.2. Members discussed the ramifications, if any, arising from the Peterborough Council’s Code containing only one ‘other interest’ to register or declare.
- 7.3. Members were informed that this approach was not considered to be reflected in many other councils, as evidenced from the position that, at the conferences attended by the officers, Peterborough was either alone or one of only a handful of councils present who took this approach.
- 7.4. Members further discussed the differences and outcomes between the current approach in the Peterborough Member Code and the approach of the codes that contained provisions on registerable Other Interests and unregistrable interests.
- 7.5. Members considered that the law on bias was a better and more appropriate tool by which the Council Members should behave, which rules out confusion or distraction. It was recognised, however, that this had, and could continue to have, two negative outcomes in relation to the Code. These were that:
- a. There was no personal responsibility for failing to deal with a conflict of interest between a councillor’s personal interests and their duty to act in the public interest when acting as a Member of the Council. Beyond the DPI provisions, the matter of an unresolved conflict of interest (bias) in a decision was largely a matter only for the corporate body and not the individual councillor concerned.
 - b. By the common-law not being reflected in the Code, these important ethical elements of decision making, which are on occasion complex and difficult, were not placed at the forefront of a Member’s mind and may not be given due weight.

- 7.6. After discussion, it was considered that these issues did not override the desire to not introduce a further layer of bureaucracy and complex coding. That was because these issues could be dealt with more effectively via other steps.
- 7.7. Firstly, the change in the descriptions of the Principles, provided a clarified provision that Members ***“should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.”***
- 7.8. By recommending that this revised wording is brought more fully into the Code, the Group believes that this now better reflects the discussion about bias. This change both guides Members more directly in being aware of their need to deal with any conflict between their role as Member and any personal interest and, crucially for this discussion, means that acting other than in accordance with this principle would not just be an issue for the Council as a body but would be treated as a breach of the Code by the individual concerned.
- 7.9. Secondly, a specific power in the Localism Act had been to introduce standing orders setting out how Members should act where they have a conflict of interest. This was intended to allow Councils to require Members with conflicts of interest to leave the room or take some other positive or recordable action in response to a conflict of interest.
- 7.10. Whilst the Group felt that the rules at Peterborough should not be expanded to that extent, it was noted that the Constitution Review Group had discussed including a standing order in its recommendations to Council to directly reflect the wording of the Principle set out above. This was felt to underscore the law in this respect and central part that ethical conduct played in decision making as well as highlighting this requirement again to Members and this action was supported by the Review Group.
- 7.11. The third step was to address a particular failing felt to have taken place by the Members of the Review Group. This was that there had been an inadequate take up of training on the law on bias. Behind that, the Members also felt there had been insufficient push of that training, by officers and key Members alike, and of the message as to how relevant and important an understanding of this area of law was to the operation of meetings and decision making.
- 7.12. This should be rectified in the next tranche of training offered and especially at induction.

8. Arrangements Concerning Allegations of Breaches of the Code

- 8.1. In considering how successful the new arrangements might be, the Review Group reviewed the cases over the last year. In doing so, it was noted that some cases continued over from the old system and that these had been ignored for the purposes of this review. In terms of the new system, at the time of review only one case had been referred for investigation.
- 8.2. The Review Group asked that all Members be canvassed as to their views. The Independent Person was also asked to submit her views for the review. All Councillors were emailed on 28th October 2013 and a reminder on 22nd November 2013 for their views on the new standards regime. Six councillors responded and their views are summarised as follows:
- I have not heard of any issues and would assume things are ticking along nicely with the new arrangements.
 - I haven't noticed the change and if I've had any complaints against me as a Councillor I'm unaware of them.
 - A minimalist approach to the entire code of conduct is preferred, therefore I would prefer to see PCC adopt the LGA model code which is a statement of principles rather than a set of prescribed rules.

- There should be reference to the use of social media within the code of conduct (i.e. Facebook, Twitter, online newspaper forums etc) and Members using these forums in an appropriate manner.
- I have no comment to make.
- I have nothing to contribute to this.

8.3. Members concluded from their review that there was a disparity between these arrangements and the bureaucracy, expense and lack of room for local action under the old regime. As a consequence, the current arrangements for investigation and decision on allegations should remain unchanged.

9. CONSULTATION

9.1 There has been consultation with Members of the Council as described above.

9.2 Each of the Members of the Review Group were appointed on behalf of their political groups, acting as a conduit for further discussion within those groups to whatever extent each Member felt appropriate.

10. IMPLICATIONS

10.1 There are no significant financial implications arising from this paper.

10.2 The relevant legal or risk implications arising from the proposals are contained within the body of this report

11. BACKGROUND DOCUMENTS

11.1 Notes and reports drafted in advance of meetings of the Review Group

11.2 All other background documents used in the drafting of this report have been public documents and are largely referred to within the report.

12. APPENDICES

Appendix A – Proposed Revision to Members Code of Conduct

PROPOSED REVISION
TO
MEMBERS' CODE OF CONDUCT

As a member or co-opted member of **Peterborough City Council** I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act 2011 provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

- Selflessness*** Holders of public office should act solely in terms of the public interest.
- Integrity*** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- Objectivity*** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- Accountability*** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- Openness*** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- Honesty*** Holders of public office should be truthful.
- Leadership*** Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

The Act further provides for registration and disclosure of interests and in Peterborough City Council this will be done as set out in Part 2 to this Code

./...

PART 1 GENERAL PROVISIONS

As a Member of **Peterborough City Council**, my conduct will in particular address the statutory principles of the Code of Conduct by:

- Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the [county][borough][Authority's area] or the good governance of the authority in a proper manner.
- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a member/co-opted member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

./...

PART 2 INTERESTS

[No change]