



Doncaster Council

Report

17th February 2021

**To the Chair and Members of the
AUDIT COMMITTEE**

ADOPTION OF A NEW MODEL CODE OF CONDUCT FOR MEMBERS

EXECUTIVE SUMMARY

1. This report presents the Local Government Association's (LGA) new Model Code of Conduct and requests the Audit Committee to consider whether to recommend to Full Council that this should be adopted at its meeting on 1st March 2021.

EXEMPT REPORT

2. N/A

RECOMMENDATIONS

3. The Committee is asked to:
 - a) RECOMMEND to Full Council that the LGA's Model Member Code of Conduct be adopted;
 - b) RECOMMEND to Full Council that the Monitoring Officer be given delegated powers to grant dispensations to Members on the grounds set out in paragraphs 11 to 15 of this report and that the Audit Committee's Terms of Reference be amended accordingly; and
 - c) Note that a number of other consequential changes to various parts of the Council Constitution arising from the adoption of the revised Code of Conduct will be made by the Monitoring Officer using his existing delegated authority.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

4. Under the Localism Act 2011, the Council has a statutory duty to promote and maintain high standards of conduct for its Elected and Co-opted Members. In discharging this duty, Councils are required to adopt a Code of

Conduct governing their Elected and Co-opted Members' conduct when acting in that capacity. The review and adoption of a new model Code of Conduct for Members should help increase public confidence in local governance through maintaining high standards of conduct by Members.

BACKGROUND

5. The current Standards Regime and most Council Codes of Conduct date back to the Localism Act 2011 (the Council's current Code of Conduct for Members was adopted on 12th July 2012) and it is an obvious statement that the world has changed substantially since that point and the current Codes did not envisage the impact of Social Media and the occasional issues that those interactions can cause.
6. In 2019, the Committee on Standards in Public Life (CSPL) produced a report into local government ethical standards, its remit was to assure itself that the ethical standards introduced by the Localism Act remains "conducive to promoting and maintaining the standards expected by the public". Whilst the Committee largely satisfied itself that the processes in place were appropriate, its main recommendation was that an updated model Code of Conduct be created, providing consistency across England and to reflect the common expectations of the public regardless of geography or tier. The LGA was tasked with creating an updated model Code, in consultation with representative bodies of councillors and officers of all tiers of local government.
7. The LGA Consultation process on the draft Code ran for 10 weeks from Monday 8 June until Monday 17 August 2020 and consisted of:
 - Workshops of Councillors and Monitoring Officers from across England and Wales to discuss the approach and content of the revised Code
 - 4 webinars conducted with over 1000 participants
 - Over 1600 written responses to the consultation received.
 - Comments, questions and feedback provided during the webinar sessions
 - Stakeholder round-table to discuss the response and next steps took place on 30 September 2020.
8. A key finding from the consultation was the need for further guidance and explanation about key aspects of the code and conduct in general. It was a fundamental aim of the revised code that it should be from the councillor's perspective and a tool to support councillors in achieving and maintaining high standards of conduct. The LGA also had the objective that the code should form the basis of a 'social contract' with the general public, to address issues of public intimidation against councillors and to help set a framework for public and councillor interaction, emphasising the importance of courtesy and respect. A final aim of the model Code was to be concise, written in plain English and be understandable to Members, officers and the public.
9. Following the close of the consultation and the issue of a final national model Code, the Council should now consider whether to adopt the new Code. This Committee is therefore requested to consider the content of the new model Code of Conduct (**Appendix A**) and agree to recommend its adoption to Full

Council. A copy of the Council's current Code is attached at **Appendix B** for comparison.

Key differences between new LGA Model Code of Conduct for Members and Doncaster Council's current Code of Conduct.

10. Outlined below is a summary of the key differences contained in the new Model Code compared to the Council's current Code:-

Purpose of the Code of Conduct

The LGA Model Code includes a new opening paragraph outlining the purpose of the Code.

General Principles of Councillor Conduct

The LGA Code includes a new section outlining general principles of Councillor Conduct, e.g. upholding the Seven Principles of Public Life (aka the Nolan Principles) and...

"In accordance with the public trust placed in me, on all occasions:

- I act with integrity and honesty
- I act lawfully
- I treat all persons fairly and with respect; and
- I lead by example and act in a way that secures public confidence in the role of councillor.

In undertaking my role:

- I impartially exercise my responsibilities in the interests of the local community
- I do not improperly seek to confer an advantage, or disadvantage, on any person
- I avoid conflicts of interest
- I exercise reasonable care and diligence; and
- I ensure that public resources are used prudently in accordance with my local authority's requirements and in the public interest."

Application of the Code of Conduct

This section now specifies that the Code applies where a Councillor's actions "...would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a Councillor."

It also outlines that the Code applies to all forms of communication and interaction by Councillors, with a new specific reference to electronic and social media communication, posts, statements and comments. This reflects the legal position as we have understood it but specifically including within the Code will add helpful clarity.

General Conduct

The general conduct guidance in the new Code has been expanded to include more detailed narrative on each obligation, providing helpful examples and definitions. For example, with regard to respect, the Council's current Code states: "You must respect others." Whereas the new Code states:

Respect

"As a Councillor:

- 1.1 I treat other Councillors and members of the public with respect.
- 1.2 I treat Local Authority employees, employees and representatives of partner organisations and those volunteering for the Local Authority with respect and respect the role they play.

Respect means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, you can express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner. You should not, however, subject individuals, groups of people or organisations to personal attack. In your contact with the public, you should treat them politely and courteously. Rude and offensive behaviour lowers the public's expectations and confidence in councillors.

In return, you have a right to expect respectful behaviour from the public. If members of the public are being abusive, intimidatory or threatening you are entitled to stop any conversation or interaction in person or online and report them to the local authority, the relevant social media provider or the police. This also applies to fellow councillors, where action could then be taken under the Councillor Code of Conduct, and local authority employees, where concerns should be raised in line with the local authority's councillor-officer protocol."

General Conduct – other new obligations

The Model Code includes new obligations in relation to:-

- Not harassing any person (includes the legal definition of harassment) and not discriminating unlawfully against any person;
- Complying with the Code – this includes new obligations for Councillors to:-
 - Undertake Code of Conduct training provided by the Local Authority;
 - Co-operate with any Code of Conduct investigation and /or determination; and
 - Comply with any sanction imposed on the Councillor following a finding that they have breached the Code of Conduct.

Interests

The Model Code introduces two tables in relation to members' declaration of interests:-

Table 1 sets out the **Disclosable Pecuniary Interests (DPs)** – these are exactly the same as those already registered/declared by Members under the Council's current Code.

Table 2 sets out **other registrable interests**. These are described as follows in the Model Code:-

"You have a personal interest in any business of your authority where it relates to or is likely to affect:

- a) any body of which you are in general control or management and to which you are nominated or appointed by your authority
- b) 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)"

With regard to non-registrable interests (those falling outside the provisions in Tables 1 and 2), the new Code also describes the action to be taken where a matter arises at a meeting which directly relates to, or affects, a Councillor's financial interest or well-being, or those of a friend, relative or close associate.

In practical terms, the provisions in the new Code with regard to Interests are as follows:-

- **Disclosable Pecuniary Interests: -**

Councillors must declare, not participate, or vote and leave the room (subject to dispensation)

This is the same as in the Council's current Code.

- **Other Registrable Interests: -**

Councillors must declare, only speak if the public are allowed to speak, not participate in the discussion or vote and leave the room (subject to dispensation).

This is a departure from the Council's current Code, which permits a Member declaring any interest other than a Disclosable Pecuniary Interest to remain in the meeting and speak and vote on the matter. It does however reflect the position which Councillors were in before 2011, and indeed the position which many of the parish councils across the UK operate.

- **Non-Disclosable Pecuniary Interest Directly Relating to Finance or Well-Being of Councillors or Relative or Close Associate: -**

Councillors must declare, only speak if the public are allowed to speak, not participate in the discussion or vote and leave the room (subject to dispensation).

This is a return to the position which members may recall pre-2011, and follows what the public would expect a member to do – not take part in a decision which they or their family may benefit from.

The requirements with regard to registering interests within 28 days of becoming a Member or re-election or re-appointment to office, and notifying the Monitoring Officer within 28 days of any changes to interests, remain unchanged.

The list of interests in the tables in the Model Code, together with the clear explanation and guidance on action to be taken when interests arise, particularly in meetings, help to provide clarity compared to the wording in the current Code and are to be welcomed. With less ambiguity, Members will have a clearer understanding under the provisions of the Model Code of which interests they should register and declare at meetings. This, in turn, should provide members with greater protection from the risk of challenge and potential complaints in relation to the non-registration/declaration of interests.

As in the current Code, the Model Code retains the facility for a Member to have a 'sensitive interest' in which case they do not have to disclose the nature of the interest.

The Model Code also retains the current requirement for Members to register any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt. The Code also introduces a new requirement for Members to register any significant gift or hospitality that they have been offered but have refused to accept.

Complaints regarding alleged breaches of the Code and Sanctions

The Council's current complaints process with regard to alleged breaches of the Code, and sanctions available to the Audit Hearings Sub-Committee following an investigation, remain unchanged. The LGA's remit was solely to create a new Model Code of Conduct and they have not made any recommendations outside of the scope of their review. On a national level, there is still much debate and lobbying of Government on the need to strengthen the existing powers of Monitoring Officers and Standards Committees in terms of dealing effectively with breaches of the Code, such as the ability to suspend or disqualify Councillors for serious breaches, but this would require primary legislation to make such changes.

Approval Process & Next Steps

If the Council is to adopt an amended Code of Conduct, it is logical to do so before the start of the new Municipal Year. Furthermore as May 2021 is the scheduled date for all-out elections, to begin a new Council with a firm statement on behaviours has obvious benefits. The suggested date for the implementation of the new Code is **7th May 2021** which is the date at which the election results will be announced. The Code of Conduct forms part of the Constitution and therefore any changes require Full Council approval.

Approval at 1st March Full Council would enable Electoral Candidates to be provided with a copy of the Code which they will automatically sign up to upon being elected.

Should the new Code be adopted then minor consequential amendments will be required to the Constitution. These will be made by the Monitoring Officer using his existing delegated authority provided in the Constitution:-

‘The Monitoring Officer is authorised to make minor amendments, consequential upon statutory or regulatory change, or to rectify errors, or to update arrangements consequential upon other external factors.’

The Committee on Standards in Public Life intended to provide a Code which was capable of adoption across all tiers of local government with the intention that the current practice use of different codes across an area is ended. If Full Council agree to adopt the proposed code the Monitoring Officer will contact all Parish & Town Council Clerks across the Doncaster Municipal area and encourage them to also adopt the Code.

Reviewing the arrangements for the granting of dispensations to Members

11. The Terms of Reference for this Committee includes the following:

“To grant dispensations to Councillors and Co-opted Members from requirements relating to interests set out in the Members Code of Conduct, where not delegated to the Monitoring Officer.”

12. When the Council agreed its new ethical governance arrangements in 2012 in response to the Localism Act, it agreed the circumstances or grounds in which the power to grant dispensations would be delegated to either the Monitoring Officer or the Audit Committee, as follows:-

- a) That so many members of the decision-making body have DPs in a matter that it would “impede the transaction of the business”. In practice this means that the decision-making body would be inquorate **[Monitoring Officer, with appeal to the Audit Committee]**;
- b) That, without the dispensation, the representation of different political groups on the body transacting the business would be so upset as to alter the outcome of any vote on the matter. This assumes that Members are predetermined to vote on party lines on the matter, in which case, it would be inappropriate to grant a dispensation to enable them to participate **[Audit Committee]**;
- c) That the Council considers that the dispensation is in the interests of persons living in the Authority’s area **[Audit Committee]**;
- d) That, without a dispensation, no member of the Cabinet would be able to participate on this matter **[Monitoring Officer, with appeal to the Audit Committee]**; or
- e) That the Council considers that it is otherwise appropriate to grant a dispensation **[Audit Committee]**.

13. Any grant of a dispensation must specify how long it lasts for, up to a maximum of 4 years.
14. The Localism Act gave discretion for these powers to be delegated to Standards Committees (in Doncaster's case, the Audit Committee) or to the Monitoring Officer. When the Council considered the delegation of these powers in 2012, it decided that as grounds a) and d) above were largely objective, it was appropriate to delegate dispensations on these grounds to the Monitoring Officer, with an appeal to the Audit Committee, thus enabling dispensations to be granted "at the door of the meeting". In respect of grounds b), c) and e), the view was taken that it was appropriate that the discretion to grant dispensations on these grounds remained with the Audit Committee.
15. As the new Model Code of Conduct, if adopted, will widen the requirements for Members to declare interests and withdraw from meetings, it is anticipated that there may be an increased demand for dispensations to be granted to Members prior to meetings to enable them to participate and vote on matters, where they meet the criteria detailed above. It is therefore suggested that, for the sake of expediency and to make the process for Members seeking dispensations simple and efficient, the powers currently resting with this Committee to grant dispensations on the grounds detailed in paragraph 12 b), c) and d) above be transferred to the Monitoring Officer, with an appeal to the Audit Committee. The Monitoring Officer will also report to this Committee details of any dispensations granted. If this change is agreed, the Terms of Reference of this Committee will need to be amended accordingly. To do otherwise will create significant issues as there would be a need to hold an audit committee on each occasion to approve a dispensation and in practical terms it will not be possible to arrange such a meeting within the timescales required.

OPTIONS CONSIDERED AND REASONS FOR RECOMMENDED OPTION

16. Under the Localism Act, the Council is legally required to adopt a Code of Conduct for Members. For the purposes of this report, there are two options available to the Council in relation to the Code of Conduct:
 - a) To retain the current Code of Conduct (not recommended); or
 - b) To adopt the new LGA Model Code of Conduct (recommended).

The launch of the new LGA Model Code of Conduct offers the Council a timely opportunity to adopt a more robust and up-to-date version of the Code. This contains new guidance and greater clarity for Members on their responsibilities when using social media and on the declaration/registration of other interests falling outside the definition of Disclosable Pecuniary Interests. It also provides more detailed guidance on Members' general obligations with regard to their behaviour and actions when carrying out their roles as elected representatives in their communities. Voluntary adoption of the Code at this point would be a sign of good practice and good governance.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

17.

Outcomes	Implications
<p>Connected Council:</p> <ul style="list-style-type: none"> • A modern, efficient and flexible workforce • Modern, accessible customer interactions • Operating within our resources and delivering value for money • A co-ordinated, whole person, whole life focus on the needs and aspirations of residents • Building community resilience and self-reliance by connecting community assets and strengths • Working with our partners and residents to provide effective leadership and governance 	<p>The adoption of a new Member Code of Conduct is key to maintaining public confidence in local governance through maintaining high standards of conduct by Members.</p>

RISKS AND ASSUMPTIONS

18. If the Council does not carry out periodic reviews of the Council's ethical governance arrangements, including the Member Code of Conduct, there is a risk that standards will be lowered, bad conduct will not be dealt with effectively and public confidence in local democracy will be eroded.
19. It is important that all Members receive training to reduce the risk of Members breaching the Code.

LEGAL IMPLICATIONS [Officer Initials: H M P Date: 4.2.21]

20. The principal statutory provisions relating to standards of conduct for Members are contained in the Localism Act 2011. Section 27(1) of the 2011 Act provides that the Council must promote and maintain high standards of conduct by Members and Co-opted members of the authority 21. Sections 27 and 28 of the Localism Act require the Council to adopt a Code of Conduct consistent with the Nolan principles of good governance and to appoint at least one Independent person whose views must be sought and taken into account before the Council makes a decision about an alleged breach of the code that has been investigated.
21. Section 33 of the Localism Act 2011 sets out criteria for the granting of dispensations to Members relieving them from the restrictions concerning participation in meetings where they have a pecuniary interest in an item of business.
22. There is no obligation by the Council to adopt a particular model of the Code of Conduct. The statutory duty is to adopt a code of conduct, which

complies with the statutory requirements referred to. It is advisable that the new model code is accepted, as it is readily understandable, deals with some of the weaknesses of the previous Code, and aims to create and maintain public confidence in the role of councillors and local government.

FINANCIAL IMPLICATIONS [Officer Initials: PH Date: 05/02/2021]

23. There are no specific financial implications associated with this report.

HUMAN RESOURCES IMPLICATIONS [Officer Initials: RH Date: 09/02/21]

24. There are no specific Human Resources implications arising from this report.

TECHNOLOGY IMPLICATIONS [Officer Initials: PW Date: 04/02/21]

25. There are no specific technology implications associated with this report.

HEALTH IMPLICATIONS [Officer Initials: RS Date: 05/02/2021]

26. Good governance is important for healthy organisations and for healthy populations. This Code of Conduct should support effective governance.

EQUALITY IMPLICATIONS [Officer Initials: JG Date 1/2/2021]

27. The adoption of a robust, clear and transparent model Code of Conduct will help to ensure that Members, Officers and the public alike understand the standards and obligations expected of our locally elected representatives. It will also ensure that a fair and consistent approach can be taken when dealing with any complaints of alleged breaches of the Code.

CONSULTATION

28. Initial consultation was carried out with the Elected Mayor, Group Leaders, the Chair of the Audit Committee, the Council's Chief Executive and the Head of Internal audit in respect of the new model Code of Conduct and proposed timeframe and decision making route for its adoption. Briefing sessions open to all Members have since been arranged to provide further detail on the content of the new Code and provide an opportunity for Members' questions to be answered. The Council's Independent Person appointed to assist the Monitoring Officer under the Localism Act 2011, Mr Philip Beavers, has also been consulted and is supportive of the new Code.

BACKGROUND PAPERS

LGA Model Code of Conduct for Members
Localism Act 2011.

GLOSSARY OF ABBREVIATIONS

LGA – Local Government Association
CSPL - Committee on Standards in Public Life

DPI – Disclosable Pecuniary Interest

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