

## **Review of the Code of Conduct**

### **Summary**

1. This report seeks to prompt discussion on whether the City Council should make any changes to its current code of conduct and draws attention to the similarities and differences between the codes adopted by the City Council and local Parish Councils.

### **Background**

2. The enactment of the Local Government Act 2000 included a framework governing the ethical conduct of Councillors. This included a statutory code of conduct which all Councils had to adopt. There was an option to add to it which few Councils took.
3. The statutory code was abolished by the Localism Act 2011. The Act instead contains:
  - A duty for Councils to promote and maintain high standards of conduct by members and co-opted members of the authority.
  - A duty for Councils to adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity
  - A requirement for the Code to include the provision the authority considers appropriate in respect of the registration in its register, and disclosure, of—
    - a) pecuniary interests, and
    - b) interests other than pecuniary interests
  - A requirement that the code, viewed as a whole, must be consistent with the following principles:
    - (a) selflessness;

- (b) integrity;
- (c) objectivity;
- (d) accountability;
- (e) openness;
- (f) honesty;
- (g) leadership.

4. Following the implementation of the 2011 Act the City Council adopted a code of conduct largely based on the previous statutory model with modifications reflecting the then new concept of disclosable pecuniary interests. A copy of the code appears at Annex A. Parish Councils adopted a code based on a model suggested by the National Association of Local Councils a copy of which appears at Annex B. There are many similarities but some differences between the two codes.

#### **When does the Code apply?**

5. As mentioned the statutory duty is to have a code which applies to Members when they are acting in that capacity. The City Council's code confirms this in its introduction but then goes on to say that:  
  
"You are acting as a Councillor or acting as a co-opted Member only when conducting the business of the Council or acting, claiming to act or giving the impression that you are acting as a representative of the Council."
6. It is possible to argue for a restrictive definition of "conducting the business of the Council". At one extreme it could mean simply attending meetings. A better interpretation would certainly include Ward work undertaken by Councillors. Councillors acting as community champions is surely the business of Council.
7. The wording set out above could though be extended if that would aid clarity. The model Parish code says it applies to members "whenever they conduct the business of the Council, *including the business of the office to which they were elected or appointed*, or when they claim to act or give the impression of acting as a representative of the Council"

8. There is though a question as to whether either the current City or the NALC wording adds anything of value to the Code. Would the code be any less clear if it simply contained a statement that it applies to Members and co-opted Members when acting in that capacity? Would that ensure some activity was covered which might not be otherwise?

### **General Duties**

9. These duties closely reflect the former model code and no issues have been identified in relation to their application in practice. Much of the same ground is covered by the NALC code although with different wording. The key differences are that:

- The NALC code does not contain an equivalent to the City Council's requirement that Members must not conduct themselves in a manner which could reasonably be regarded as bringing the Council or their position as a Councillor into disrepute.

This is one of the most frequent grounds upon which complaints are founded although very often it features alongside a complaint that a Member has failed to treat someone with respect.

- The NALC code does not contain the same specific exceptions to the rule against disclosing confidential information.

It is difficult to imagine a situation where a Parish Councillor might actually breach this provision where a City Councillor can claim the benefit of the exceptions but the inclusion of them in the City Council's code does perhaps act as an aid to understanding.

- The NALC code does not contain a provision relating to preventing people obtaining access to information to which they are entitled.

10. While no particular difficulties have been identified with the general obligations Members are invited to discuss whether any improvements can be made. Would there perhaps be any merit in moving to wording more closely aligned with the NALC code?

## **Disclosable pecuniary interests**

11. The requirement to register DPI's simply reflects the law. It seems sensible to repeat these provisions in the Code both for ease of reference and because there may be circumstances where a breach does not warrant criminal proceedings being pursued by the police but could warrant action by the Committee.
12. The requirement to declare DPI's at meetings set out in paragraph 4(3) of the Code is in line with the rather unfortunate phraseology of the Act in saying:

“If you are present at a meeting and you *have a disclosable pecuniary interest* in any matter to be considered or being considered at the meeting”

13. Disclosable pecuniary interests are defined in Regulations and include interests such as a person's employment. The wording used in the NALC code therefore makes rather more sense in saying: “Where a matter arises at a meeting which relates to an interest...”. It does, however, leave open the question of how closely the business must relate to the interest. That is a rather troubling gap when criminal penalties are attached but is a gap caused by the legislation.
14. Members may wish to consider whether adopting wording closer to that used by NALC would be helpful or not.

## **Notification of other interests**

15. Both the City and Parish Councils require the registration of interests associated with the membership of certain outside bodies. The wording of these provisions is identical and is in line with the previous statutory model. No issues have been identified with this.
16. Both sets of codes also require the registration of gifts or hospitality valued in excess of £50. The City's code goes further than the Parishes in requiring the registration of offers of gifts of hospitality as well as their receipt. It also clarifies that the details of the person who has offered the gift should be recorded. Members may wish to revisit the question of whether a declined offer of a gift need be registered. They may also wish to review whether £50 is the right limit. Occasionally issues are raised as to how to value

an offer of hospitality and this may be something that Members wish to discuss.

### **Declarations in relation to other registered interests**

17. The impact of having a registered interest which relates to business being considered by the Council can be significantly different for City in comparison to Parish Councillors. For the former it falls to be considered as a personal and/or prejudicial interest as described below. The NALC model automatically means that the Councillor will not be allowed to vote on the matter but may speak. This has the advantage of being simple and clear to apply where the relationship between the business and the interest is clear. It does though disqualify Councillors from voting on matters even where their only interest is that the Council itself has asked the Council to be its representative on a body.

### **Other interests of the Councillor and their associates**

18. The NALC code disqualifies a Councillor from voting on a matter which relates to the financial interest of a friend, relative or close associate. The City's code does not restrict itself to financial interests. It says that a Councillor has a personal interest in any business which relates to or is likely to affect the Councillor, a person with whom they have a close association or one of the persons or bodies named in their register of interest. If not already registered the personal interest has to be declared.
19. The City's code follows the previous statutory code in then having a concept of "prejudicial interests". This is an interest which "a member of the public with knowledge of the relevant facts would reasonably regard .... as so significant that it would be likely to prejudice [the Councillor's] judgement of the public interest." Certain interests set out in paragraph 6(4) of the code are excluded from being treated as prejudicial. Members may wish to discuss whether the relative complexity of these provisions strikes the right balance.
20. The current City code is not as clear as it could be on the impact of having such an interest which is left to standing orders. It seems appropriate to include a provision within the code.

## Dispensations

21. Dispensations may be granted allowing Members to participate in business even where they may otherwise have an interest. In the case of the City Council these may be granted by the Monitoring Officer in consultation with the Chair of the Committee. The NALC code makes reference to the availability of dispensations. Members may wish to consider whether a similar reference in the City's code would be appropriate.

## Recommendations

22. Members are recommended to:
- 1) Discuss the report and identify any areas where the wording of the City Council's code may be improved
  - 2) Ask the Monitoring Offer to bring back a revised draft Code to a future meeting

Reason: To ensure that the City Council has an effective and easily understood code of conduct.

## Contact Details

### Author:

Andrew Docherty  
Monitoring Officer  
Customer and Business  
Support Services  
Tel No. 01904 551004

Report  
Approved

Date 13/11/15

**Wards Affected:** *List wards or tick box to indicate all*

**All**

**For further information please contact the author of the report**

**Background Papers:** None

Annex A – City Council Code of Conduct  
Annex B - NALC Model Code of Conduct