

Joint Standards Committee

2 August 2017

Report of the Monitoring Officer

Review of the Code of Conduct

Summary

1. This report provides Members with information to consider as part of a review of the City Council's code of conduct. Members are asked to consider how they would like to take this review forward.

Background

2. The Localism Act 2011 removed the former national code of conduct for Councillors and replaced it with a new code of conduct featuring three main requirements:
 - a) A requirement that Councillors register "disclosable pecuniary interests". Where a Councillor has a disclosable pecuniary interest in a matter being considered at a meeting then it must be declared (if not already registered) and the Member must not participate in the discussion or vote on that business. Failure to comply is a criminal offence.
 - b) A requirement that each Council promotes and maintains high standards of conduct by members and co-opted members.
 - c) A requirement that each Council 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.
3. Councils' Codes of Conduct must be consistent with the following principles:
 - (a) selflessness;
 - (b) integrity;

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

Codes must also make appropriate provision for the registration and disclosure of pecuniary and non pecuniary interests. Beyond that the contents of codes are a matter for each Council.

4. The City Council adopted a code of conduct in 2012. That code was very much based on the previous national code of conduct but incorporated the new requirements in respect of disclosable pecuniary interests. The code has the following key elements:

- Requirements as to behaviour generally;
- Requirements to register and declare disclosable pecuniary interests;
- Requirements to register membership of certain outside bodies;
- Requirements to declare personal interests, including those which might relate to the Member, their close associates or their registered outside bodies;
- Requirements to withdraw from meetings if the interest is considered to be prejudicial, that is where a member of the public would reasonably regard it as so significant that it would be likely to affect the Member's view of the public interest.

5. The Joint Standards Committee reviewed the Council's code in 2015. The previous committee papers may be viewed here:

<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=140&MIId=8728&Ver=4>

That review resulted in some relatively small changes to the code. The current code is available to view here:

<http://democracy.york.gov.uk/ecSDDisplay.aspx?NAME=Section%2005A%20Members%20Code%20of%20Conduct&ID=2153&RPID=14794407>

6. During the course of the previous review the Committee compared the Code with the model code issued to Parish Councils by the National Association of Local Councils. A copy of that Model code is attached to the previous papers. The codes have many similarities – particularly as regards the general behaviour expected of Councillors.
7. In considering any changes to the code of conduct Members may wish to consider any issues which have arisen from complaints made under the code. The Monitoring Officer would highlight three issues:
 - a) Complaints, not infrequently, raise matters which are not related to the Councillor's role. A complainant has recently and very nicely summed up a commonly held view by saying that a Councillor, like the local Vicar, should never be off duty. The Monitoring Officer's advice is that this does not reflect the law. The code of conduct can only cover the conduct of Members when they are acting in that capacity. This is set out in paragraph 1 of the code. Consideration could though be given as to whether that provision should be expanded.
 - b) The current code does not define "prejudicial interests" so as to cover the interests of close associates. This is a gap which the Committee may well feel should be closed.
 - c) The extent to which Members' statements should be regarded as political free speech requiring a high degree of protection has arisen from time to time. Members may wish to consider making some express reference to this within the code.
8. Members may also wish to look at similar Codes adopted in other parts of the United Kingdom. Wales, Scotland and Northern Ireland all have national codes of conduct in place.
9. An example of the Welsh Code is available here:

<http://www.ceredigion.gov.uk/SiteCollectionDocuments/Your%20Council/Councillors%20and%20Committees/Ethics%20and%20Standards/code-of-conduct-members-may-2016-english.pdf>

This code was issued under the Local Government Act 2000 (the Act which formerly governed the national arrangements for England). The code uses a similar format and very similar wording to the former English Code and so very much in line with the Code adopted by the City Council although without the references to disclosable pecuniary interests. A key difference, however, is that this Code covers some conduct falling outside the Member's Official capacity. The Welsh legislation was amended to allow for this.

10. Other differences include:

- An extended definition of "meeting". Under the Welsh code declarations of interests are required at any meeting where Members or Officers are present rather than just at formal meetings of the Council. Although political group meetings are excluded this would cover a much wider range of meetings than the current City Council code including: working groups, site visits, meetings with residents regarding case work, member training, discussions with Officers etc.
- A duty to report suspicions of criminal behaviour by other Members or by Officers of the Council.
- A duty not to make vexatious, frivolous, or malicious complaints.
- A duty to comply with any request made in connection with the investigation of a complaint.
- An extended requirement in relation to the use of Council resources including a provision requiring that they are not used "imprudently".
- A duty, when making decisions, to do so on the basis of the merits of the circumstances involved and in the public interest.
- A duty to observe the law and the authority's rules governing the claiming of expenses and allowances in connection with the Member's duties.

- An extended duty in respect of gifts and hospitality. In Wales the requirement is to avoid accepting gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch authorised by the authority), material benefits or services which might reasonably appear to place the Councillor under an improper obligation.
- Prejudicial interests are defined so as to include interests in business being considered at a scrutiny committee where the Member was involved in making a decision which is under review. The Committee previously decided not to include this requirement in York's code.
- The Welsh code is supported by guidance issued by the Welsh Public Services Ombudsman. The guidance may be viewed here:

https://www.ombudsman-wales.org.uk/~media/Files/CodeofConductguidance_E/Code%20of%20Conduct%20CCBC%20%20NPA%20%20amended%20April%202013%20ENGLISH.ashx

11. The Scottish code adopts a somewhat different style. It is available here:

<http://www.gov.scot/Resource/Doc/334603/0109379.pdf>

In the main this code applies to a Councillor when acting in his or her official capacity. It is considerably longer than the York and the Welsh codes and contains more text to explain the behaviours required to demonstrate that the principles underpinning the code have been met.

Some of the other key differences between this code and the current York code are that:

- The equivalent of the Member/office relations protocol is specifically referred to within the code. A breach of the protocol is treated as a breach of the code.
- Specific reference is made to compliance with rules relating to remuneration, expenses etc.
- Far more detailed explanation is included of when it might be appropriate to accept gifts.

- Specific reference is made to duties when appointed as a company director.
 - Reference is made as to the legal requirements in respect of a Councillor's participation in matters relating to setting the budget where they are two months or more in arrears with their council tax. Reference is also made as to duties where a Member is otherwise in debt to the Council.
 - The rules on declaring interests are extended to cover inter alia: dealings with Council officers, meetings with other Councillors (including party group meetings), and any other meeting, formal or informal, where the Councillor is representing the Council.
 - The code contains specific provisions in respect of lobbying and in relation to handling regulatory matters, particularly relating to planning. In York these are dealt with in the separate planning code of good practice.
12. The Scottish code is supported by further guidance available here:
http://www.standardscommissionscotland.org.uk/uploads/files/1456907377160301CllrsCodeConduct_SCSGuidance.pdf
13. In Northern Ireland the code also covers conduct beyond that carried out in an official capacity. It is based on twelve principles with principles of public duty, promoting good relations, equality, respect and good working relationships being added to those applied in England.
14. Other differences include:
- a specific duty for Councillors to review their personal circumstances at least annually and to take steps to mitigate conflicts of interest;
 - a duty to report criminal behaviour;
 - a duty to comply with requests made by the investigating body during investigations;
 - a duty to maintain and strengthen public confidence in the integrity of the council, to promote and support the code and to encourage other councillors to do so;

- a duty to act in the interests of the whole community;
- a statement that Councillors can express any political opinion they wish but should not express opinions which are manifestly in conflict with the principles of the code;
- the equivalent of the Member/Office relations protocol is brought within the remit of the code;
- as with the Welsh code Members must not use the resources of the council imprudently;
- a duty to observe the law and Council procedures relating to expenses and allowances;
- a duty (reflecting the law in Northern Ireland) to declare family relationships between the councillor and those who work for the Council or who are candidates for posts;
- rules in respect of declaring interests are extended beyond formal Council meetings;
- rules on lobbying are brought within the code;
- rules on proper decision making are set out in the code, in particular in relation to planning matters.

Options

15. Members are asked to consider what changes, if any, they want to make to the Code. Options include:

a) No change

This is not recommended. As a minimum, Members are recommended to expand the definition of “prejudicial interests”.

b) Minor additions

This would involve retaining the current format of the code, amending the definition of a “prejudicial interest” and perhaps identifying a small number of additional matters covered by the various national codes which could be included within the York code. A possible disadvantage might be that changes could make the code less consistent with the Parish code.

c) *A substantial rewrite*

This would also have the potential disadvantage of being less consistent with the Parish code and might also have the disadvantage of losing the familiarity of the current code. It could have the advantage of providing greater clarity as to the kind of behaviour which would breach the code and also give greater status to the Member/Officer protocol and the Planning Code of Good Practice. If this option is chosen it may be appropriate to establish a small working group to help frame the drafting.

d) *Developing Guidance for Members*

Alongside any of the options above Members may wish to prepare a guidance document similar in style to those issued by the various national bodies in the rest of the UK. This would be a substantial piece of work.

Recommendations

16. Members are recommended to:

- 1) To indicate what changes, if any, they would wish to make to the City Councils code of conduct.

Reason: To ensure that the Committee continues to make an effective contribution to ethical standards within the City Council.

Contact Details

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**Report
Approved**

Date 12/07/17

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

All

For further information please contact the author of the report

Background Papers: None