

WAVERLEY BOROUGH COUNCIL

STANDARDS COMMITTEE

12 MARCH 2019

Title:

REVIEW OF MEMBER CODE OF CONDUCT

[Portfolio Holder: Cllr Julia Potts]

[Wards Affected: All]

Summary and purpose:

Waverley adopted a local *Members' Code of Conduct and Arrangements for dealing with complaints under the Code of Conduct* on 17 July 2012, in accordance with the requirements of the Localism Act 2011. The Code of Conduct, Arrangements for dealing with Complaints, and the Planning Code of Conduct, were reviewed in 2016, and revised versions agreed by Council on 18 October 2016.

This report proposes a number of additions to the Code of Conduct which provide additional clarification on the core principles of the Code, and address some procedural matters on which the Code is currently silent.

How this report relates to the Council's Corporate Priorities:

Confidence in high standards of conduct is a key part of understanding and responding to our residents' needs.

Financial Implications:

There are no budget implications, and the operation of the new Code has generally been accommodated within existing budgets over the last four financial years.

Legal Implications:

The Council is under a range of duties under the Localism Act and operating the Code and arrangements is a key part of discharging these duties. The Council can choose to amend its Code or arrangements when it considers appropriate.

Introduction

1. The Localism Act 2011 gave Councils an explicit duty to promote and maintain high standards of Member conduct. It obliged the Council to adopt a Code dealing with the high standard of conduct that is expected of Members when acting in their official capacity.
2. The Members' Code of Conduct, Planning Code of Good Practice, and Arrangements for dealing with complaint about Members were adopted in July 2012 and subsequently revised in October 2016, the revisions reflecting and providing

clarification on issues that had arisen through complaints submitted to the Monitoring Officer.

3. The Monitoring Officer team has considered the Code of Conduct in the light of recent complaints, and requests for advice; information from other local authorities; and also as part of the preparations for induction and training of councillors after the May 2019 elections. As a result of these considerations, it is suggested that there are a number of matters where more clarification could be provided to councillors in relation to the code of conduct.

Recommended changes

4. Annexe 1 sets out the text of the existing Code of Conduct with all suggested amendments highlighted in red. The Committee reviewed the proposed changes at its meeting in January 2019, and in principle was content with the changes but asked for further revisions to the wording on:
 - new paragraph 1 (7) - to be split into two paragraphs, to separate out the two elements of the statement.
 - new paragraph 5 (6) – the wording in relation to dealing with including sensitive information on the Register of Interests to be simplified and made clearer.
 - new paragraph 7 – to be made clearer that the intention of this paragraph is to give a standing dispensation to Members to participate in certain business of the Council from which they might otherwise be excluded through having a Disclosable Pecuniary Interest, as set out in Paragraph 5 (1).
5. The following table summarises the key changes that have been put forward and why, with the revisions requested shown in bold.

5.1 Suggested Amendments to Waverley Code of Conduct

Where	What	Why
<i>Paragraph 1 (1)</i>	<i>Includes explicit reference to Members being bound by the Code when using email and social media platforms.</i>	<i>For the avoidance of any doubt, and recognising the increased use of email and social media such as Facebook or Twitter to engage with residents.</i>
<i>Paragraph 1 (3)</i>	<i>Clarifies the detail of the Nolan principles.</i>	<i>For the avoidance of doubt.</i>
<i>Paragraph 1 (5)</i>	<i>Clarification of definition of terms used in the Code.</i>	<i>For the avoidance of doubt.</i>
<i>Paragraph 1 (7)</i>	<i>New! Clarification that allegations of a breach of the Code will be dealt with in accordance of the agreed Arrangements.</i>	<i>In the interests of transparency. To make explicit what is already referred to by cross-references between this code and the Arrangements for dealing with complaints against a councillor</i>

		<i>or co-opted Member.</i>
Paragraph 1 (8)	<i>New! Clarification of the legal sanctions that may arise from failure to register a Disclosable Pecuniary Interest in accordance with the Localism Act.</i>	<i>In the interests of transparency. To make explicit the ramifications of failing to register a Disclosable Pecuniary Interest.</i>
<i>Paragraph 2 (2)</i>	<i>Specifically addresses the need to observe protected characteristics under the equality enactments.</i>	<i>For the avoidance of doubt.</i>
<i>Paragraph 2 (8)</i>	<i>Specific cross reference to the Planning Code of Best Practice and Member/Officer Protocol</i>	<i>For the avoidance of doubt.</i>
<i>Paragraph 5 (1)</i>	<i>Clarification that Members must not participate in any decision where they may be seen as having a conflict of interests.</i>	<i>To promote public transparency. To support the Monitoring Officer in providing advice to members on the implications of their interests.</i>
Paragraph 5 (6)	<i>Clarification of the arrangements in relation to public disclosure of sensitive information as part of a Member's register of interests.</i>	<i>For the avoidance of doubt that this facility is available in exceptional circumstances.</i> <i>Wording has been simplified with deletions shown as tracked changes.</i>
<i>Paragraph 5 (7)</i>	<i>Clarification that entries on the register of interests will be removed once the Monitoring Officer is advised that the Member no longer has the interest, or they cease to be an elected councillor or co-opted Member.</i>	<i>For the avoidance of doubt.</i>
Paragraph 7	<i>Clarificaton that elected councillors may participate in Council business in respect of housing (even if they are a Council tenant), agreeing the Members Allowances Scheme, setting the council tax pre-cept.</i>	<i>For the avoidance of doubt.</i> <i>See the background set out in paragraphs 5.2-5.9, below for the explanation of the purpose of this paragraph.</i>

<i>Paragraph 9</i>	<i>New! The Code is currently silent on the arrangements for considering and granting requests for dispensations. This paragraph confirms that the Monitoring Officer will consider requests and may grant dispensations that fall within the specified criteria.</i>	<i>For the avoidance of doubt (this was part of the agreement of the new Standards Arrangements by Council on 17 July 2012, but not explicitly referred to in the Code of Conduct).</i>
--------------------	---	---

- 5.2 The Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 introduced “Disclosable Pecuniary Interests” and new rules on the grant of dispensations to allow Council Members to take part in decisions or vote on matters in which they have a Disclosable Pecuniary interest (“DPI”).
- 5.3 Where a Member has a DPI, they cannot speak and/or vote on a matter in which they have such an interest, unless they have obtained a dispensation in accordance with the requirements of section 33 of the Localism Act.
- 5.4 The grounds for the grant of a dispensation under section 33(2) of the Localism Act are, if, after having regard to all relevant circumstances, the Council considers that:
- (a) Without the dispensation the number of Members prohibited from participating in or voting on any particular business would be so great a proportion of the body transacting the business as to impede the transaction of that business.
 - (b) Without the dispensation every Member of the Executive would have a DPI prohibiting them from participating/voting in any particular business to be transacted by the Executive.
 - (c) Without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business.
 - (d) The grant of the dispensation would be in the interests of the inhabitants of Waverley.
 - (e) It is otherwise appropriate to grant the dispensation.
- 5.5 Previously, the national model Code of Conduct for Members specifically stated that Members would not have a prejudicial interest in certain circumstances that potentially affected the majority or a large number of Members. These general exemptions included an interest in any business of the Council which related to:
- (i) housing, where the Member was a tenant of the council (provided that, those functions did not relate particularly to the Member’s own tenancy or lease)
 - (ii) an allowance, payment or indemnity given to members and
 - (iii) setting the council tax or a precept under the Local Government Finance Act 1992
- 5.6 The arrangements on DPIs introduced by the Localism Act did not reproduce any of the “general exemptions” set out above. The matters listed above are likely to constitute a DPI, which would prevent Members having such an interest from participating in the decision-making process if they do not have a dispensation.
- 5.7 In February 2012, the Parliamentary Under Secretary of State wrote to all Local Authority Leaders in relation to this issue and stated:

“some council monitoring officers are informing their councillors that being a council tax payer is a disclosable interest in any budget debate. Councillors are then informed that they would be committing a criminal offence if they speak or vote in that debate unless they obtain a formal dispensation.

.....in our opinion, such dispensations are unnecessary”

- 5.8 Whilst this is not statutory guidance and has not been tested in court, Waverley’s approach has been to rely on guidance issued. However, for the avoidance of any doubt, it is proposed to include in the Member Code of Conduct a blanket dispensation to all Members to enable them to make decisions on the matters specified, notwithstanding them having registered a DPI that would otherwise exclude them from participating.
- 5.9 All Members explicitly sign up to the Code of Conduct as part of their Declaration of Acceptance of Office, therefore the dispensation is granted for the 4-year period of their term of office.

Committee on Standards in Public Life

6. Since the Committee considered the proposed amendments to the Code of Conduct in January, the Committee on Standards in Public Life has published its report on Local Government Ethical Standards. The report looks at the current framework governing the behaviour of local government councillors and executives in England and makes a number of recommendations to promote and maintain the standards expected by the public.
7. The Executive Summary of the report, plus the list of recommendations and suggested best practice, is attached for information (Annexe 2). Some of the recommendations will need changes to legislation to make them mandatory, although some could be adopted on a voluntary basis.
8. It is proposed that officers review the report and compare recommended best practice against Waverley’s arrangements, and bring a report with recommendations where appropriate to the June meeting of the Standards Committee.

Conclusion

9. The proposed amendments to the Members’ Code of Conduct do not add any additional burdens on Waverley Members, but provide clarification on a number of areas, which may be helpful to newly elected members in particular.
10. A further review of Waverley’s Standards framework will be undertaken against the recommendations of the report of the Committee on Standards in Public Life on Local Government Ethical Standards.

Recommendation

It is recommended that the Standards Committee considers the proposed amendments to the Members Code of Conduct and recommends to Council that these be adopted.

Background Papers

There are no background papers (as defined by Section 100D(5) of the Local Government Act 1972) relating to this report.

CONTACT OFFICER:

Name: Robin Taylor
Monitoring Officer

Telephone: 01483 523108

E-mail: robin.taylor@waverley.gov.uk