



REPORT of MONITORING OFFICER

**to
JOINT STANDARDS COMMITTEE
25 FEBRUARY 2016**

COUNCILLOR CODE OF CONDUCT - REVIEW

1. PURPOSE OF THE REPORT

- 1.1 To review and report to the Council on the Councillor Code of Conduct.

2. AREA FOR DECISION / ACTION

- 2.1 The Localism Act 2011 required the Council to adopt a new Code of Conduct consistent with a number of principles set out in the Act, and arrangements for dealing with any alleged breach of the Code. The Councillor Code of Conduct currently in force was adopted by the Council on 5 July 2012.
- 2.2 At the special meeting of the Committee on 18 December 2016 it was decided to recommend to the Council that the Councillor Code of Conduct is reviewed in its entirety with particular reference to the possible re-introduction of a provision that refers to the bringing of the Council into disrepute. This arose from a conduct complaint being considered by the Committee at the time.
- 2.3 As mentioned above, the law requires the adoption of a Code of Conduct which, when viewed as a whole, is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. These are long-established principles otherwise known as “the Nolan Principles”, published in 1995 by the Committee on Standards in Public Life led by Lord Nolan as part of the then Government’s transparency and accountability agenda.
- 2.4 The other statutory aspect of the Code of Conduct is replication of the law relating to the new categorisation of disclosable interests and how Councillors’ participation in meetings is affected by such interests. In all other respects the content is consistent with good practice and Government advice, and to a certain extent discretionary.
- 2.5 The Committee in its recent deliberations identified circumstances in which the behaviour of a Councillor, while not likely to amount to a breach of any provision of the existing Code could reasonably be regarded as likely to affect the reputation of the Council. Although featuring in an earlier version of the Code, this is something that may be difficult to evidence and felt to be subjective. It is clear however, that a number of Councils including several neighbouring ones in Essex have a provision of this nature that makes reference to bringing either the Councillor’s office or the authority into disrepute.

2.6 Tendring District Council incorporates the following provision:

Conduct

You must:

- (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute;
- (b) not make vexatious, malicious or frivolous complaints against other members or anyone who works for, or on behalf of, the Authority.
- (c) comply with any request of the authority's Monitoring Officer or Section 151 Officer, in connection with an investigation conducted in accordance with their respective statutory powers.

2.7 I believe that the above provision would be a worthwhile addition to the Code of Conduct and commend it to the Committee for recommendation to the Council.

2.8 Subject to the views of Committee and the Council itself, there is little else that needs to be reviewed other than perhaps the definition of the scope of the Code. First, the Code of Conduct should always be construed in conjunction with other codes and protocols adopted by the Council as part of its constitution. Since the more recent shift in emphasis of the standards regime towards local rather than national control there has been some debate around interpretation of conduct “in your official capacity”. The obvious conclusion is that anything done in a private capacity is not covered by the Code.

2.9 When drafting the 2007 Code, the last statutory Code, Parliament incorporated some reasoning arising from an early important legal case to enable official capacity to be construed as:

- conducting the business of your authority or office, or
- acting, claiming to act, or giving the impression that you are acting as a representative of your authority.

The Standards Board for England took the view in 2009 that this reasoning was still relevant to a proper interpretation and understanding of official capacity, because it helps to interpret what is meant by the two phrases above that define official capacity.

2.10 Whilst the Council’s current adopted Code simply refers to “official capacity”, it is felt that the wider interpretation as set out above would be most helpful and indeed has been included by some neighbouring Authorities in their Codes together with a wider explanation of the Code’s scope. The following paragraph to replace paragraphs 2.1 and 2.2 of existing section 2 of the Code (para. 2.3 to remain and become para. 2.2) is therefore also commended to the Committee:

2. WHAT DOES THE CODE APPLY TO

2.1 You must comply with this Code whenever you conduct the business of your authority (which includes the business of the office to which you are elected or appointed) or act, claim to act or give the impression you are acting as a representative of your authority.

- 2.11 As mentioned in paragraph 2.3 above, the Code of Conduct must be consistent with the “Nolan Principles”. Occasionally, some uncertainty arises in linking a conduct complaint to a provision of the actual Code itself. The public will see these Principles annexed to the report and will gain the clear impression that they are very much part of the Code. In order to reduce any uncertainty, it is possible to include the Principles as part of the Code and preface the conduct provisions of the Code to require that Councillors have regard to these principles. In that sense they would not be new provisions as such but rather support and complement the existing provisions. This would seem to fit with public perception and expectation.
- 2.12 One further change proposed is to correct an anomaly between the requirements of the Code as to the registration of interests and the actual Register of Interests Form which was also adopted in 2012. This is simply to ensure that all categories of interests as set out in the Code are required to be registered, hence the revision at new paragraph 9.1.3.
- 2.13 The effect of all of the above proposed changes are set out in the adopted Code of Conduct at **APPENDIX 1** to this report.

3. IMPACT ON CORPORATE GOALS

- 3.1 This links with the corporate goal of ‘Delivering good quality, cost effective and valued services in a transparent way’ and the desire for high ethical standards.

4. IMPLICATIONS

- (i) **Impact on Customers** – Meets the two core values of ‘Transparent and Accountable’ and ‘Customer Focus’ which supports the Council’s corporate goals.
- (ii) **Impact on Equalities** – None.
- (iii) **Impact on Risk** – None.
- (iv) **Impact on Resources (financial)** – None.
- (v) **Impact on Resources (human)** – None.
- (vi) **Impact on the Environment** – None.

5. RECOMMENDATION

The Committee recommends the Council to adopt a revised Code of Councillor Conduct incorporating the proposed revisions described above and shown in **APPENDIX 1** to the report.

Background Papers: None.

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