

Public
Key Decision - No

HUNTINGDONSHIRE DISTRICT COUNCIL

Title/Subject Matter: Model Councillor Code of Conduct 2020

Meeting/Date: Corporate Governance Committee –
26th January 2022
Council – 23rd February 2022

Executive Portfolio: Councillor R Fuller, Executive Leader

Report by: Monitoring Officer

Ward(s) affected: All

Executive Summary:

The Local Government Association (LGA) Model Code of Conduct (“Model Code”) was published in December 2020 and updated in May 2021. A link to the current Code of Conduct in place for District Councillors is attached at Appendix 1 and the new Model Code attached at Appendix 2.

Guidance on the LGA Model Code of Conduct (“the Guidance”) was issued on 7th July 2021. A copy of the Guidance is attached at Appendix 3. The Guidance is designed to help understanding and consistency of approach towards the Model Code.

The purpose of the Model Code and the Guidance has been designed to protect the democratic role, encourage good conduct and safeguard the public’s trust and confidence in the role of councillor in local government.

The next scheduled elections for the District Council will be held in May 2022 and it was felt appropriate to coincide the implementation of the Model Code in line with the new intake of Members.

Recommendation:

The Committee is

RECOMMENDED

that the LGA Model Code and Guidance be referred to Council for approval.

The Council is

RECOMMENDED

to consider approving and adopting the LGA Model Code and Guidance to take effect from May 2022.

1. PURPOSE OF THE REPORT

- 1.1 The purpose of this report is to consider the adoption of the LGA Model Code of Conduct (“the Model Code”) and associated Guidance (“the Guidance”).

2. WHY IS THIS REPORT NECESSARY/BACKGROUND

- 2.1 The current Councillor Code of Conduct was originally adopted by the Council on 4th July 2012.
- 2.2 Following extensive consultation, the LGA published the Model Code in December 2020 to encourage good conduct and safeguard the public’s trust in local government.
- 2.3 The Model Code was developed in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance.
- 2.4 The LGA states that the purpose of the Code of Conduct is to assist councillors in modelling the behaviour that is expected of them, to provide a personal check and balance and to set out the type of conduct that could lead to action being taken against them. It is also to protect councillors, the public, fellow councillors, local authority officers and the reputation of local government. It sets out the general principles of conduct expected of all councillors and their specific obligations in relation to standards of conduct. The fundamental aim of the Code is to create and maintain public confidence in the role of councillor and local government.
- 2.5 All councils are required to have a local Councillor Code of Conduct and the Model Code is provided for use by councils as a template to adopt in whole and/or with local amendments should they wish to. It is the role of the Corporate Governance Committee to determine whether to recommend the Model Code, amended or otherwise to Full Council for inclusion in the Council’s Constitution. While the Council administers code of conduct complaints on behalf of Town and Parish Councils in the District, the adoption of a Code is a matter for each Town/Parish Council.
- 2.6 There are certain new obligations such as an obligation to attend training albeit there is a provision currently within the District Council’s Constitution that Members who sit on a regulatory committee cannot do so until they have undertaken suitable training upon appointment. There is more text on bullying, harassment and discrimination, the use of confidential information and on equalities issues. Reference to social media is now included in the Model Code.
- 2.7 There are changes regarding declarations of interest and the most notable change is around the registration and disclosure of “Other Registerable Interests” (“ORI’s”) and Non-Registerable Interests (“NRI’s”) which replace “non-disclosable pecuniary interests or non-pecuniary interests” in the current Code.

2.8 ORI's which you must register are defined in the Model Code as follows –

“a) any unpaid directorships b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority c) any body (i) exercising functions of a public nature (ii) 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) of which you are a member or in a position of general control or management”

2.9 NRI's on the other hand mean an interest that may arise not just from interests already on your register. The Guidance says, *“There will also be times when, although the interest does not personally involve you, it may involve a relative or close associate. You are not expected to register every interest of those people, but you will need to declare them as and when they might arise.”*

2.10 Disclosable Pecuniary Interests (DPI's) and ORI's are interests which must be recorded on a public register except in limited circumstances. NRI's do not need to be recorded on the register but will need to be declared as and when they arise.

2.11 As regards ORI's the Guidance states, *“these are categories of interest which apply only to you and which the LGA believes should be registered as an aid to transparency.”*

2.12 The Guidance provides the following commentary on ORI's which is reproduced below in full for ease of reference –

“Other registerable interests In addition to the Disclosable Pecuniary Interests above, you must, within 28 days of the code being adopted by your local authority, or your election or appointment to office (where that is later), notify the monitoring officer in writing of the details of your interests within the following categories, which are called ‘other registerable interests’: (a) Details of any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your local authority; (b) Details of any body of which you are a member or in a position of general control or management and which – • exercises functions of a public nature • is directed to charitable purposes, or • is a body which includes as one of its principal purposes influencing public opinion or policy (c) Details of any gifts or hospitality with an estimated value of more than £50 or such other limit as your local authority has agreed, that you receive personally in connection with your official duties.

With Other Registerable Interests, you are only obliged to register your own interests and do not need to include interests of spouses or partners. Therefore, a spousal interest in a local group is not registerable as an ‘other registerable interest’. Failure to register these interests is not covered by the criminal offence but would be a breach of the code.

What is a “body exercising functions of a public nature”? Although it is not possible to produce a definitive list of such bodies, here are some criteria to consider when deciding whether or not a body meets that definition - • does that body carry out a public service? • is the body taking the place of local or central government in carrying out the function? • is the body (including one outsourced in the private sector) exercising a function delegated to it by a public authority? • is the function exercised under legislation or according to some statutory power? • can the body be judicially reviewed? Unless you answer “yes” to one of the above questions, it is unlikely that the body in your case is exercising functions of a public nature. Examples of bodies included in this definition: government agencies, other councils, public health bodies, council-owned companies exercising public functions, arms-length management organisations carrying out housing functions on behalf of a council, school governing bodies.

Do local campaigning or Facebook groups need to be registered?

Membership (which does not include simply being on a mailing list), of local campaign or Facebook groups will only need to be registered if they are bodies: • exercising functions of a public nature; • directed towards charitable purposes; or • one whose principal purpose includes influencing public opinion or policy. Generally, it is unlikely that these groups will be regarded as formal bodies to be registered. However, each case should be considered on its own merits. ‘A Body’ is defined as ‘a number of persons united or organised’. Some groups are very united on their cause and organised, but their purpose must fall under one of the functions listed above. There must also be some formality to the membership, such as registration for example. Simply attending a meeting of a local campaign does not of itself make you a ‘member’ of that organisation. There has been a growth in organisations which are more nebulous in nature, and no formal membership requirements exist, such as Extinction Rebellion. It can be helpful to ask yourself the question “do I consider I am a member of the organisation” and if the answer is yes, then register the membership for transparency purposes. If you need further information or specific advice, please speak to your clerk or monitoring officer.

What about membership of a political party or trade union? The second category of other registerable interests refers to membership of a body or being in a position of general control and management of a body, one of whose principal purposes includes the influence of public opinion or policy. This includes any political party or trade union. Memberships of political parties and Trade Unions therefore need to be registered. Remember that if because of membership of a political party or a trade union any payment or financial benefit is received, it is likely to come under the Sponsorship category of DPI.”

- 2.13 As regards NRI’s the Guidance states, this interest arises where the interest is that of yourself or your partner which is not a DPI or of a relative or close associate”.
- 2.14 The Guidance provides the following commentary on NRI’s which is reproduced below in full again for ease of reference –

“As a councillor you are not expected to have to register the interests of your relatives or close associates but under the Code you are expected to declare them as and when relevant business occurs which affects their finances or wellbeing. The Code says you should not participate in the relevant business in two circumstances: • a. when a matter directly relates to that interest. Or • b. when a matter affects that interest to a greater extent than it affects the majority of inhabitants and • a reasonable member of the public would thereby believe that your view of the public interest would be affected. For example, under a) if your son has submitted an application for a licence to open a bar, the matter directly relates to your relative. You must not take part in any discussion or vote on the matter. For example, under b) there has been an application made to build several units of housing on a field adjacent to your business partner’s home. It is not their application, but they will be more affected by the application than the majority of people so again you would be expected to declare the interest and withdraw. Similarly, an application for the property next door to you does not directly relate to your property so it is not a DPI, but you would instead need to declare a Non-Registerable Interest. In all of these cases you can speak on the matter before withdrawing but only where the public are also allowed to address the meeting. If the public are not allowed to address the meeting on that item, you would need if necessary, to get another councillor who did not have an NRI to make any relevant case or to represent the wider views of constituents. As with DPIs you can be granted a dispensation (see below).

What is the difference between ‘relates to’ and ‘affects’? Something relates to your interest if it is directly about it. For example, the matter being discussed is an application about a particular property in which you or somebody associated with you or an outside body you have registered has a financial interest. ‘Affects’ means the matter is not directly about that interest but nevertheless the matter has clear implications for the interest – for example, it is a planning application for a neighbouring property which will result in it overshadowing your property. An interest can of course affect you, your family or close personal associates positively and negatively. So, if you or they have the potential to gain or lose from a matter under consideration, an interest would need to be declared in both situations.

What does “affecting well-being” mean? The term ‘well-being’ can be described as a condition of contentedness and happiness. Anything that could affect your quality of life or that of someone you are closely associated with, either positively or negatively, is likely to affect your well-being. There may, for example, be circumstances where any financial impact of a decision may be minimal but nevertheless the disruption it may cause to you or those close to you could be significant. This could be on either a temporary or permanent basis. Temporary roadworks in your street may affect your wellbeing on a temporary basis. Closure of a local amenity may have a more permanent impact on your wellbeing if you use it more than the majority of people in the area.

What are the definitions of relative or close associate? The Code does not attempt to define “relative” or “close associate”, as all families vary. Some people may have very close extended families, but others will have more distant relations. You should consider the nature of your relationship with the person (eg whether they are a close family member or more distant relation). The key test is whether the interest might be objectively regarded by a member of the public, acting reasonably, as potentially affecting your responsibilities as a councillor. It would be a person with whom you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts. A close associate may also be somebody to whom you are known to show animosity as you might equally be viewed as willing to treat them differently.

What if I am unaware of the interest? You can only declare an interest in a matter if you are aware of the interest. For example, a company of which your father-in-law is a director may have made an application to the local authority. You may not be aware that he is a director, and you are not expected to have to ask about the business affairs of your relatives or acquaintances simply because you are a councillor. However, you would need to declare an interest as soon as you became aware. A reasonable member of the public would expect you to know of certain interests of course, so it is, for example, reasonable that you would be expected to know your daughter’s address or job but not necessarily any shareholdings she might have. While it is therefore your decision as to whether or not to declare an interest, you should always consider how it might seem to a reasonable person and if in doubt always seek advice from the monitoring officer.”

2.15 At present where a member attends a meeting and has a DPI they must withdraw from the room unless they have a dispensation. However, if they have a “non-disclosable pecuniary interest or non-pecuniary interest” they must make a verbal declaration of the existence and nature of that interest at or before the consideration of the item of business or as soon as the interest becomes apparent. However, in theory they can still stay in the room, take part in the discussion, and vote on the item. However, in the new Model Code where a matter arises at a meeting and the member has an ORI or a NRI they must always withdraw from participation where the matter directly relates to that interest unless they have a dispensation.

2.16 However, the Guidance the goes on to say –

“If it is something which affects the financial interest or wellbeing of that interest you are asked to declare it and the Code then asks you to apply a two-part test before considering whether to participate in any discussion and/or vote: 1. Does the matter affect the interest more than it affects the majority of people in the area to which the business relates? For example, if a major development affects the settlement where your sister lives and your sister would be no more affected than anybody else – for example,

she lives at the other end of the settlement rather than next door to the development, the answer would be no. If the answer is yes, you then ask: 2. Would a reasonable member of the public knowing all the facts believe that it would affect your judgment of the wider public interest? This is similar to the test for bias (see guidance on predetermination and bias in Part 2) and if the answer is yes to that question then you must not take part in the meeting. You help to run a food bank and are considering a motion to investigate the causes of poverty. A reasonable member of the public would not think that fact would affect your view of the wider public interest. You are over 65 and are taking part in a discussion about provisions for older people. You would be more affected than the majority, but a reasonable member of the public would not think that fact would affect your view of the wider public interest. You are discussing closure of the local authority-run home where your elderly parent lives. A reasonable member of the public would think that fact would affect your view of the wider public interest because of the direct effect on your parent.”

2.17 In the current Code under gifts and hospitality it says –

“7.1 You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £50 which you have accepted as a member from any person or body other than the authority.

7.2 The Monitoring Officer will place your notification on a public register of gifts and hospitality.”

2.18 In the Model Code this would be replaced with –

“As a councillor: 9.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage. 9.2 I register with the monitoring officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt. 9.3 I register with the monitoring officer any significant gift or hospitality that I have been offered but have refused to accept.”

3. OPTIONS CONSIDERED/ANALYSIS

3.1 Until such time as the Council agree to adopt a new or revised Code of Conduct the existing version will continue to meet the Council’s statutory requirements. The Council can choose to adopt the new Model Code in full or in part or retain its existing code.

3.2 If full Council ultimately decides to adopt the Model Code, then this will require the Monitoring Officer to make changes to the register of members interest form and there will be a requirement for all members to update their individual register. The change will require amendment of the electronic register of members interests form and of meetings agenda templates where they refer to the declarations required in the existing

Code of Conduct. It will also require an amendment to the form for granting Dispensations. Members will also need training on the new Code. It is therefore advised that if the Model Code is adopted that implementation should not happen until May 2022 following the elections whereby the new Code will apply as soon as the Declaration of Acceptance of Office is signed by the councillor.

4. TRAINING

- 4.1 It is proposed that training on the new Model Code (if adopted) for all Members and Officers should be arranged in May 2022 and following the elections so that all Members (both new and re-elected) will have a good and up-to-date knowledge and understanding of the new Code.

5. TOWN AND PARISH COUNCILS

- 5.1 All Town and Parish Councils in the District will be aware of the new Model Code and some have been asking if the District Council had a timetable for adopting it. It is anticipated that the majority will follow the lead of the District Council based upon the adoption of the 2012 Code.
- 5.2 The Cambridgeshire & Peterborough Association of Local Councils Ltd (CAPALC) has already held two training sessions for Cambridgeshire & Peterborough councils on the Model Code in May 2021. The sessions were run by Hoey Ainscough Associates Ltd who were commissioned by the Local Government Association to draw up the Guidance to support the Model Code.
- 5.3 If Council resolves at its meeting in February 2022 to adopt the new Model Code to take effect from May 2022 then this will give Town and Parish Council's only three months to make the necessary arrangements to follow the Council's lead.

6. LEGAL IMPLICATIONS

- 6.1 Under the Localism Act 2011 the Council is under a duty to promote and maintain high standards of conduct and to adopt a Code of Conduct for its elected Councillors based on the principles of standards in public life.
- 6.2 It is not mandatory for all Councils to have the same code.

7. REASONS FOR THE RECOMMENDED DECISIONS

- 7.1 All Councils are required to adopt a local Councillor Code of Conduct and it is considered appropriate for the Council to adopt the Model Code for the reasons set out in the report.

8. LIST OF APPENDICES INCLUDED

Appendix 1 – Current Code of Conduct

Appendix 2 – Local Government Association Model Councillor Code of Conduct 2020

Appendix 3 – Guidance on Local Government Association Model
Councillor Code of Conduct

9. BACKGROUND PAPERS

Local Government Association – Guidance on Model Councillor Code of Conduct
2020. Published 23.12.20

HDC Constitution – Code of Conduct

CONTACT OFFICER

Name/Job Title: Tom Lewis, Head of Legal Practice & Monitoring Officer
Lisa Jablonska, Elections and Democratic Services Manager &
Deputy Monitoring Officer
Tel No: (01480) 388004
Email: tom.lewis@3csharedservices.org
lisa.jablonska@huntingdonshire.gov.uk