

DECISION-MAKER:	GOVERNANCE COMMITTEE		
SUBJECT:	ANNUAL REPORT ON THE MEMBERS' CODE OF CONDUCT		
DATE OF DECISION:	28 TH SEPTEMBER 2020		
REPORT OF:	SERVICE DIRECTOR: LEGAL & BUSINESS OPERATIONS AND MONITORING OFFICER		
<u>CONTACT DETAILS</u>			
Executive Director	Title	Deputy Chief Executive	
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STATEMENT OF CONFIDENTIALITY			
None			
BRIEF SUMMARY			
At the time of the adoption of the current Code of Conduct for Members in 2012 the Council requested the Monitoring Officer (Service Director: Legal & Business Operations) to produce an annual report outlining the impact of the Code, a summary of the complaints received and any action taken.			
RECOMMENDATIONS:			
	(i)	The Committee is asked to note this annual report for the year 2019/20.	
REASONS FOR REPORT RECOMMENDATIONS			
1.	Unless there are any changes required to be made to either the Code or the procedures for investigation, this report is only for noting.		
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED			
2.	None.		
DETAIL (Including consultation carried out)			
3.	The Governance Committee has the following terms of reference in relation to corporate governance and the Code of Conduct issues:		
	•	To lead on the Council's duties under Chapter 7 Localism Act 2011 and to design, implement, monitor, approve and review the standards of ethics and probity of the Council, both for Councillors and employees. The Committee's powers shall include responding to consultation documents and the promulgation of Codes of Conduct but the adoption and revisions to the local Members Code of Conduct shall be reserved to the Council.	
	•	To promote a culture of openness, ready accountability and probity in order to ensure the highest standards of conduct of Councillors and employees.	

	<ul style="list-style-type: none"> • To lead on all aspects of Corporate Governance by promoting the values of putting people first, valuing public service and creating a norm of the highest standards of personal conduct.
	<ul style="list-style-type: none"> • To oversee and manage programmes of guidance, advice and training on ethics, standards and probity for Councillors and employees and on the Members Code of Conduct.
	<ul style="list-style-type: none"> • To be responsible for the Council's register of Members' interests and to receive reports from the Monitoring Officer on the operation of the register from time to time.
	<ul style="list-style-type: none"> • To be responsible for written guidance and advice on the operation of the system of declarations of Members' Interests and to receive reports from the Monitoring Officer on the operation of the system of declarations from time to time.
	<ul style="list-style-type: none"> • To establish, monitor, approve and issue advice and guidance to Councillors on a system of dispensations to speak on, or participate in, matters in which they have interests and give dispensation in appropriate cases.
	<ul style="list-style-type: none"> • To exercise the functions of the Council in relation to the ethical framework, corporate governance and standards of conduct of Joint Committees and other bodies.
	<ul style="list-style-type: none"> • To establish a Standards Sub-Committee to investigate and determine appropriate action in respect of alleged breaches of the Members Code of Conduct.
	<ul style="list-style-type: none"> • To support the Monitoring Officer and Executive Director: Finance & Commercialisation & Commercialisation in their statutory roles and the issuing of guidance on them from time to time.
	<ul style="list-style-type: none"> • To receive regular reports on the performance of the Corporate Complaints process, Local Government & Social Care Ombudsman referrals, Annual Governance Statement and Code of Corporate Governance and to recommend revisions to related policies and procedures as appropriate.
4.	The Council has a responsibility for making arrangements to receive and consider complaints against Councillors in Southampton. Stage 1 is receipt and initial consideration and, where appropriate, informal resolution by the Monitoring Officer. Where warranted, at Stage 2, the Governance Committee will determine the complaint following a detailed investigation by the Monitoring Officer or someone on his behalf.
5.	Since the adoption of the current Members' Code of Conduct, the Standards Sub-Committee has not had cause to meet to consider any allegations of breach of the Members' Code of Conduct.

<u>Complaints Received</u>	
6.	The Council adopted a revised Members' Code of Conduct consistent with the requirements of the Localism Act 2011 on 11 th July 2012.
7.	In summary, the regime remains fairly low key. All members have completed their Register of Interests, are reminded annually of the need to keep it updated (the Register is publicly accessible and viewable online) and a few complaints have been received. All issues / complaints have been resolved by the Monitoring Officer, investigated as appropriate and/or rejected and advice given to the complainant at Stage 1 of the complaints procedure, meaning that there have been no determinations or findings of a failure to comply with the relevant Code of Conduct by the Committee.
8.	The Monitoring Officer received no formal complaints about Councillors in 2019/20 which required preliminary investigation.
9.	All complaints, formal and informal, are taken seriously and investigated as appropriate. In order to be considered under the formal complaints process, complaints must be submitted in writing, must provide substantiated information and should outline what form of resolution the complainant is seeking. When a complaint does not meet these criteria and does not reveal a potential breach of the Members' Code of Conduct, it is treated as a "general enquiry". This means that the Monitoring Officer responds to the complainant in writing explaining why the matters complained of do not constitute a potential breach of the Members' Code of Conduct. Occasionally, due to capacity or other reasons that the Monitoring Officer deems appropriate, independent external assistance may be sought to assist in determining complaints.
10.	When a complaint is submitted which provides the relevant information, the Monitoring Officer will consider and decide as to whether it will be treated as a valid complaint or not. Where it is considered valid, the Monitoring Officer may deal with the matter under delegated powers unless, after consultation with the Designated Independent Person, it is considered that the breach is potentially serious enough to merit putting before the Standards Sub-Committee for determination. None met that threshold.
<u>Applications for Dispensation</u>	
11.	If a member wishes to apply for a dispensation to allow them to take part in a meeting with a disclosable pecuniary interest, they must submit a written application to the Monitoring Officer. Applications are then decided by him or by the Governance Committee.
12.	The Localism Act 2011 substantially changed the rules on interests. Regrettably, it was incomplete to order to permit members to carry out their full duties in relation to being able to vote on the budget. Annually before Full Council, all members are granted a blanket dispensation by the Monitoring Officer to allow them to take part in the decision to approve the Council's budget and set the Council Tax bands. No other dispensations have been applied for.

<u>A proposed revised Model Code of Conduct</u>	
<u>Background</u>	
13.	Section 27(2) of the Localism Act 2011 requires all local authorities to adopt a code dealing with the conduct that is expected of members and co-opted members of the authority where they are acting in that capacity. The Council has adopted such a code as members will be aware.
14.	Although there is currently no statutory Model Code, the Localism Act sets out the principles (based on the <i>Nolan Principles of Public Life</i>) which must underpin the code adopted by a local authority and with which it must be consistent; namely: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The local authority's code must also include provision for the registration of pecuniary and other interests, and a procedure for addressing complaints of failure to comply with the code and, again, these must be consistent with the provisions of the Localism Act.
15.	Having regard to all these matters, local authorities are able to devise their own code, or may adapt a model code issued by a national body. The adopted Code for the Council has been broadly agreed by most upper tier authorities across the county.
16.	The Ethical Standards regime across English local authorities has been the subject of criticism for some time, with the main issues surrounding inconsistency, vagueness or contents of the various Codes of Conduct which have been adopted, and the lack of real sanctions against those members who are found to have breached the code.
<u>The Local Government Association's Model Code</u>	
17.	Members may recall that the key recommendations of a report from the Committee on Standards in Public Life (CSPL) which was published in January 2019 and previously circulated. One of the key recommendations was that the Local Government Association (LGA) should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.
18.	The LGA's draft Model Code of Conduct is at Appendix 1.
19.	Whilst uniformity across the country may be considered helpful, it should be noted that a model Code can be amended, rejected or adopted in full by each local authority. So long as the seven Principles of Public Life referred to above are reflected in and upheld by its own Code, a local authority may tailor the wording to suit its own particular circumstances.
<u>Comment on the Model Code</u>	
20.	The draft LGA Code firstly sets out the general principles of public life referred to in paragraph 15 above which should be "upheld", and then goes on to set out a number of general obligations, some of which (but not all) are also picked up as specific obligations under the model Code with further explanatory text. It is not clear why some of the obligations such as the use of public resources are expended upon later whilst acting lawfully is not.
21.	For example, a new concept of "civility" is proposed. The general obligation is to "treat all persons with civility". The specific obligation is to "commit to treating other councillors and members of the public with civility (and) treating council employees, employees, employees and representatives of partner

	organisations and those volunteering for the councils with civility and respecting the roles they play” and guidance on what this means is also set out in the model Code itself.
22.	This replaces the obligation in the Council’s Code to “treat others with respect”. There are other provisions in the LGA Code that do not appear in the Council’s code, for example, the obligation not to unlawfully discriminate given that is the law in any event. There is also no requirement in the model code to have regard to advice from the Chief Financial Officer or the Monitoring Officer, or to give reasons for decisions. Whilst this is covered elsewhere in the Council’s Constitution, it may be prudent to add to the Code in due course.
23.	Additionally, there is a proposed reference of not bringing the role of councillor or the council itself into disrepute, however, appears to limit this to being dishonest or deceitful. The Council’s Code refers to more general behaviour and promoting high standards.
24.	So far as declaration of interests are concerned, the provisions in the model Code include the provisions relating to disclosable pecuniary interests together with a requirement to register an organisation with particular purposes or functions defined in the model Code, to which a member has been appointed by the Council.
25.	Where a matter arises at a meeting which “directly relates” to a members’ financial interest or wellbeing but is not a disclosable pecuniary interest, the model Code appears to require a member to withdraw from the meeting even if the member is not affected to a greater extent than the majority of inhabitants of the ward affected by the decision (para 5 of Appendix 2 of the model Code). This aligns with the Council’s current Code.
26.	Moreover, where the member’s financial interest or wellbeing is affected more than the majority of inhabitants of the ward affected, the test as to whether the members should therefore withdraw from the room is whether “a reasonable member of the public knowing all the facts would believe it would affect your view of the wider public interest”. This contrasts with the current test which is that the member should withdraw where the “the interest is such that a reasonable person with knowledge of all the relevant facts would consider your interest so significant that it is likely to prejudice your judgement of the public interest”.
27.	In summary, the proposed changes are not profound. The Council’s adopted Code has worked well to date and, therefore, in the Monitoring Officer’s opinion does not require significant change. Any particular concerns or proposed variations from the Committee can be considered once a final model Code is provided and a further report can be presented for consideration.
<u>Supporting Members of the Council</u>	
28.	Training has previously been provided to newly elected members, and as required for new Cabinet Members and those members who sit on regulatory bodies such as Licensing Committee and the Planning & Rights of Way Panel.
29.	Importantly, the adopted Member Learning & Development Strategy has been implemented and member training via external partners, such as the LGA and

	SEE, has gradually increased. Group Leaders have committed to increasing member development at all levels of office to better support members in discharging their roles. However, with the current Covid-19 epidemic and the local elections in May cancelled the planned induction and training programme has been deferred. However, as it is likely the pandemic and subsequent different ways of working will continue for the foreseeable future officers are rethinking how ongoing training and support can best be effectively provided in order to ensure members are equipped to discharge their duties fully.
30.	In addition, the Head of Business Operations, who started in April, and the Head of Organisational Development have developed and are implementing individual and team development for Cabinet Members and then with the Executive Management Team that includes use of psychometric and 360 degree feedback tools to support them.
<u>Gifts & Hospitality</u>	
31.	The requirement for members to register any gifts or hospitality received in their capacity as an elected member is currently set at a minimum of £50. Minimal notifications have been made which probably reflects the limited quantity and value of any received. This requirement does, however, exclude anything relevant to elected members who are the Mayor or Sherriff when acting in those capacities.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
32.	None.
<u>Property/Other</u>	
33.	None
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
34.	Chapter 7 Localism Act 2011.
<u>Other Legal Implications:</u>	
35.	None
RISK MANAGEMENT IMPLICATIONS	
36.	None.
POLICY FRAMEWORK IMPLICATIONS	
37.	None.
KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	None
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	LGA – Draft Model Code of Conduct

Documents In Members' Rooms

1.	None	
Equality Impact Assessment		
Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.		No
Data Protection Impact Assessment		
Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.		No
Other Background Documents		
Other Background documents available for inspection at:		
Title of Background Paper(s)		Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	None	