

Report of the Epping Forest Standards Committee



Epping Forest District Council

Report of: Monitoring Officer

Subject: Revisions to the Code of Member Conduct

Responsible Officer: Simon Hill (Deputy Monitoring Officer, EFDC) (01992 564249)

Recommendations:

- (1) To consider the changes implemented by the Epping Forest Standards Committee to the Councillors Code of Conduct; and**
 - (2) That the Council adopts the new Code of Conduct Accordingly.**
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1. (EFDC Monitoring Officer) Councillors maybe aware of the complete review of the District Council's Constitution. As part of the review, the District Council's Monitoring Officer has reviewed whether the Code of Conduct requires any amendment.

2. This review was timely as:

- (i) There has been no recent review of the District's Code in light of operational experience;
- (ii) Since the last iteration of the Code, the Government has published a further report of the Committee on Standards in Public Life;
- (iii) There has been a recent standards case that has resulted in an Investigator making recommendations in relation the treatment of non-pecuniary interests.

3. The review highlighted two areas as being in need of revision:

- (i) Dealing with Non-pecuniary interests
- (ii) Revisions to the Nolan principles

Dealing with Non-Pecuniary Interests

4. A recent Investigators report on a Standards complaint case highlighted that the Code did not take effect unless there was a pecuniary interest and remained silent on predetermination in non-pecuniary interest cases. Having rechecked with the Public Law Partnership a later version of their Model Code has the following provision:

"Public Perception

If you have an interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement in the public interest and you are present at a meeting of the Authority at which such business is to be considered or is being considered you must:

- (i) Disclose the existence and nature of the interest; and
- (ii) Withdraw from the room or chamber where the meeting considering the business is being held"

5. This addition gives guidance on non-pecuniary interests and deals with the subjective assessment each Councillor must make on items where they may be open to accusations that they are predetermined.

6. This wording has been included in our new code at Paragraph 11.2.

The Nolan Principles

7. The Government has, since the last review of the Code, published a further report of the Committee on Standards in Public Life. That report¹ reviews the principles that the Nolan Committee² originally put forward. There are suggested minor wording changes as a result of their review, which leave the headings unchanged but do change the descriptions.

8. Within their report the Committee flags up the following reasoning for these changes:

- The description of the present formulation of honesty refers to holders of public office having a duty to declare any conflicts of interest. The avoidance of conflicts of interest fits more obviously into our current understanding of integrity. Most people today would expect honesty to have a much broader meaning, focusing on truthfulness. This has particular resonance at the present time since a number of issues of current concern have involved allegations of inappropriate behaviour being covered up.
- Discussion around the importance of public office-holders making decisions on merit, tends to refer more frequently to impartiality than to objectivity. We think it would be helpful to include impartiality in the description of the meaning of objectivity.
- Equality of opportunity has become even more of a central tenet of thinking about ethics and values in the period since the principles were first established. We think it would be helpful to make clearer that objectivity requires giving full regard to the importance of equality of opportunity and fair treatment, irrespective of individual characteristics such as disability, race, gender or sexual orientation.
- Public office-holders sometimes need to show courage in speaking up about difficult issues, speaking “truth to power” and making or sticking by difficult decisions. We see this as a key element of ethical leadership and have amended the description of leadership accordingly.

9. The Council’s Standards Committee has concluded therefore that some adjustments to the principle wording were needed. The revised wording has been incorporated into the new code.

Other Issues

10. The Council has completed a full review of the Constitution. As part of their work, they have looked at a number of the ancillary documents that are attached which have, over

¹ Report of the Committee on Standards in Public Life published here:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/228884/8519.pdf
Chapter 3

² First Nolan Committee Report
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/336919/1stInquiryReport.pdf

time, increased the size of the document. Further work is to be undertaken by the Council's Constitution Working Group on the Planning Protocol and guidance on gifts and hospitality which will be notified to Parish and Town Councils. If the Parish/Town Council wish to submit areas where they would like guidance they should contact Simon Hill directly.

Request to adopt the new Code

11. The District Council has now adopted the new code. This is attached as an Appendix to this report. The District Council's Standards Committee are encouraging both Local Councils affiliated to their Committee and those affiliated to the Town and Parish Joint Standards Committee to adopt the revision and provide confirmation to the Monitoring Officer that they have done so.

Epping Forest District Council

Promoting and Maintaining High Standards of Conduct in Local Government

Code of Member Conduct

Councillor Code Of Conduct

Part 1 General Provisions

Introduction and interpretation

As a member you are a representative of this authority and the public will view you as such therefore your actions impact on how the authority as a whole is viewed and your actions can have both positive and negative impacts on the authority.

This Code as a whole is consistent with “Nolan Principles” and the provisions of S29(1) Localism Act 2011

Glossary of terms used:

“relevant period” means the period of 12 months ending with the day on which you give notification to the authority’s monitoring officer of any disclosable pecuniary interests you had at the time of the notification.

“profit or gain” includes any payments or benefits in kind which are subject to Income Tax

“beneficial interest” means having an economic benefit as a legal owner or holding it on trust for the beneficial owner, having a right to the income from the land or securities or a share in it or the right to the proceeds of sale or share of part of the proceeds of sale

1. Who does the Code apply to?

This Code applies to all members of the Epping Forest District Council, including co-opted members.

It is your responsibility to comply with the provisions of this Code.

2. What does the Code apply to?

The Code applies to you whenever you are acting in your capacity as a member of the Council, including:

- (a) at formal meetings of the Council and all of its committees and subcommittees;
- (b) when acting as a representative of the Council;
- (c) in discharging your functions as a ward councillor;
- (d) at meetings with officers;
- (e) at site visits;
- (f) when corresponding with the Council other than in a private capacity.

The Code does not seek to regulate what you do in your private and personal lives.

3. General obligations

- (1) You must treat others with respect.
- (2) You must uphold the law
- (3) You must not:
 - (a) do anything which may cause your authority to breach any of the equality enactments;
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be:

- (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

4. Confidential Information

You must not:

- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is:
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the authority; or
- (b) prevent another person from gaining access to information to which that person is entitled by law.

5. Conferring an advantage or disadvantage

You:

- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of your authority:
 - (i) act in accordance with your authority's reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

PART 2 MEMBERS INTERESTS

6. Disclosable Pecuniary Interests

6.1 You have a disclosable pecuniary interest in any business of your authority if it is of a description set out in 6.2 below and is either:

- (a) An interest of yours
- (b) An interest (of which you are aware) of a spouse, civil partner or a person you are living with as a spouse or civil partner (known as 'Relevant Persons').

6.2 It relates to or is likely to affect:

- (i) Any employment, office, trade, profession or vocation carried on by you or a relevant person for profit or gain;
- (ii) Any payment or provision of any other financial benefit (other than from your authority) made or provided within the relevant period in respect of any expenses incurred in carrying out your duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992;
- (iii) Any beneficial interest in securities of a body where-
 - (1) that body (to your knowledge) has a place of business or land in the area of your authority and
 - (2) either:
 - (a) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
 - (b) the beneficial interest exceeds one hundredth of the total issued share capital of the share capital of that body, if of more than one class, the total nominal value of the shares of any one class
- (iv) Any contract for goods, services or works which has not been fully discharged between you or a relevant person and your authority or a body in which you or they have a beneficial interest;
- (v) A beneficial interest in any land in your authority's area;
- (vi) Any tenancy where to your knowledge (a) the landlord is your authority and (b) the tenant is a body in which you or a relevant person has a beneficial interest;
- (vii) a licence of any land in your authority's area (alone or jointly with others) that you or a relevant person occupy for a month or longer.

7. Pecuniary Interests

7.1 You have a Pecuniary Interest in any business of your authority where either it relates to or is likely to affect:

- (i) any person or body who employs or has appointed you;
- (ii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specific in paragraph 6.2.(iii) which has been fully discharged within the last 12 months;

8. Non-Pecuniary Interests

8.1 You have a non-pecuniary interest in any business of your authority where it relates to or is likely to affect:

- (i) 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 the authority;
- (ii) any body:
 - (1) exercising functions of a public nature; or
 - (2) directed to charitable purposes; or
 - (3) 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;

- (iii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;
- (iv) a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of a relevant person to a greater extent than the majority of:-
 - (a) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
 - (b) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's areas

9. Disclosure of Interests

9.1 Subject to sub-paragraphs 9.2 to 9.6, where you have a Disclosable Pecuniary Interest, Pecuniary Interest or a Non-Pecuniary Interest in any business of your authority and you are present at a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.

9.2 Sub-paragraph 9.1 only applies where you are aware or ought reasonably to be aware of the existence of the pecuniary or non pecuniary interest

- 9.3 Where you have an interest in any business of your authority which would be disclosable by virtue of paragraph 9.1 but by virtue of paragraph 14 (sensitive interests) details of the interest are not registered in your authority's published register of members' interest and that the interest is a disclosable pecuniary interest (if that is the case) but you need not disclose the nature of the interest to the meeting
- 9.4 Where you have a pecuniary interest in any business of your authority and a function of your authority may be discharged by you acting alone in relation to that business, you must ensure you notify the authority's monitoring officer of the existence and nature of that interest within 28 days of becoming aware that you will be dealing with the matter even if more than 28 days before you will actually deal with the business
- 9.5 Where you have an interest in any business of your authority which would be disclosable by virtue of paragraph 9.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest
- 9.6 In this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000

10. Disclosure of Interests generally

- 10.1 Subject to sub-paragraph 10.2 where you have a pecuniary interest in any business of your authority you also have a disclosable pecuniary interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgment in the public interest.
- 10.2 You do not have a disclosable pecuniary interest in any business of your authority where that business-
- (i) does not affect your financial position or the financial position of a person or body described in paragraph 8.1 (a) i. and ii.;
 - (ii) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8.1 (a) i and ii; or
 - (iii) relates to the functions of your authority in respect of-
 - (a) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (b) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

- (c) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
- (d) an allowance, payment or indemnity given to members;
- (e) any ceremonial honour given to members; and
- (f) setting council tax or a precept under the Local Government Finance Act 1992

11. Effect of Disclosable Pecuniary Interests on participation

- (a) If you are present at a meeting of the Authority or of any committee, subcommittee, joint committee or Joint Subcommittee and you or a Relevant Person has a Disclosable Pecuniary Interest in any matter to be considered, or being considered, at a meeting and you are aware of that interest:
 - (i) You must not participate, or participate further, in any discussion of the matter at the meeting, or participate in any vote, or further vote, taken on the matter at the meeting.
 - (ii) You must withdraw from the room or chamber where the meeting considering the business is being held unless you have received a dispensation from the Standards Committee or the Authority's Monitoring Officer.
 - (iii) You must not exercise executive functions in relation to any business of the authority; and
 - (iv) You must not seek improperly to influence a decision about that business
- (b) If a function of your authority may be discharged by a member acting alone and you have a disclosable pecuniary interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take any steps or any further steps in relation to the matter (except for the purpose of enable the matter to be dealt with otherwise than by yourself).

11.2 Public Perception

If you have an interest which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to affect your judgement in the public interest and you are present at a meeting of the Authority at which such business is to be considered or is being considered you must:

- (i) Disclose the existence and nature of the interest (subject to the provisions of paragraph 9(3) above); and
- (ii) Withdraw from the room or chamber where the meeting considering the business is being held"

PART 3 REGISTER OF MEMBERS INTERESTS

12. Registration of Members' Interests

(a) Subject to paragraph 13, you must, within 28 days of:

- (i) this Code being adopted by or applied to your authority; or
- (ii) your election, re-election or appointment or re-appointment to office (where that is later), or co-opted onto the authority

register in your authority's register of members' interests (maintained by the Monitoring Officer under Section 29(1) of the Localism Act 2011) details of:

- (i) disclosable pecuniary interestsⁱ as referred to in paragraph 6 that you, your spouse, civil partner or person with whom you live as if they were your spouse or civil partner in so far as you are aware of their interests at that time
 - (ii) pecuniary interests referred to in paragraph 7 that you have;
 - (iii) Non Pecuniary Interests referred to in paragraph (8) (i), (ii) and (iii) that you have
- (b) You must keep your Register of Interests up to date by notifying the Monitoring Officer of any changes to your interests referred to in (a) above within 28 days of the change occurring or becoming aware of the change

13. Sensitive Information

13.1 Where you have a disclosable pecuniary interest referred to in paragraph 6 or pecuniary interest referred to in paragraph 7 and the nature of the interest is such that you and your authority's monitoring officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the authority's register then copies of the register available for inspection and any published version of the register should not include details of the interest but may state that you have an interest details of which are withheld under s32(2) of the Localism Act 2011 and/or this paragraph.

13.2 You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph 13.1 is no longer sensitive information, notify your authority's monitoring officer

13.3 In this Code "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subject to violence or intimidation.

CODE OF CONDUCT

APPENDIX 1

THE NOLAN PRINCIPLES AND SECTION 28(1) OF THE LOCALISM ACT 2011

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.
