

<b>Report to Joint Standards Committee</b>	<b>SC/02/16</b>
<b>Date of meeting:</b> 14 March 2016	<b>County Divisions affected by the decision:</b> All Divisions
<b>Title of report:</b> Review of the Member Code of Conduct	
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## 1. Purpose of report

- 1.1 The Joint Committee has previously agreed that the Code of Member Conduct ought to be reviewed.
- 1.2 This report asks the Joint Committee to consider the attached draft Code of Conduct

## 2. Recommendations

- 2.1 That the Joint Committee considers the draft revised Member Code of Conduct appended to this report and the two issues identified in paragraph 3.8.
- 2.2 That the draft code is the subject of consultation with all members of the County Council and the Fire Authority and with the Independent Persons.
- 2.3 That the Joint Committee recommends to Essex County Council and the Essex Fire Authority that the revised draft code is adopted subject to any changes agreed by the ECC Deputy Monitoring Officer in consultation with the Chairman of the Joint Committee as a result of the consultation.

## 3. Background and proposal

- 3.1 The current Member Code of Conduct applies to both ECC and the Fire Authority. It was approved at a meeting of the full Council on 16 October

2012. The Essex Fire Authority approved the Code at a meeting of the authority on 5 September 2012.

- 3.2 These were the first which each organisation had adopted under the provisions of the Localism Act 2011 which gave the local authority discretion as to the contents of the code of conduct, but took away the power of the Standards Committee to apply any substantive sanction for councillors found to have broken the code.
- 3.3 The current codes are both based on a 'template' code drafted by monitoring officers across Essex. Most Essex councils, including ECC and the Fire Authority, have used a template as a starting point but have made some changes. The template is based to some extent on the previous national code of conduct.
- 3.4 The codes have now been in force for 3½ years. There have been a number of complaints which have resulted in investigation and there has now been one hearing by the Hearings Sub Committee. It is understood that there has only been one allegation made to the Fire Authority and that did not result in an investigation.
- 3.5 It is sensible to review any new system after it has had the chance to bed in. There are a few issues with the wording of the code where officers feel that the wording could be improved. In August 2014 the Committee agreed that the Code should be reviewed.
- 3.6 A revised draft code has now been produced and is attached at appendix 1.
- 3.7 The draft revised code is slightly shorter and has been slightly re-ordered. The main changes are:
  - (a) **Simplification of the rules about declarations of interests.** The current rules are complex and are poorly understood. The current Code defines 'pecuniary interests' 'other pecuniary interests' and 'personal interests'. It is proposed that in future there will be two types of interest; 'pecuniary interests' and 'personal interests'. [see paragraph 24.13.2 and throughout the code].
  - (b) **Extension of the right to grant dispensations.** The current rules allow the Standards Committee to grant a dispensation for pecuniary interests, but not for other types of interest. It seems clear that the ability to grant these dispensations ought to be in the code.[paragraph 24.11]
  - (c) **Clarification around members' equality duty** to make it clear that this paragraph applies to members' personal behaviour rather than the decisions they take. This change is proposed because we have received allegations where complainants have sought to argue that decisions taken by Councillors are a breach of the code because (they argue) the decision is discriminatory. This amendment makes it clear that only a member's personal behaviour can be a breach of the code. If people consider that a decision taken by the Authority is discriminatory then it should be

considered via the proper channels rather than being considered as a code of conduct complaint. [paragraph 24.2.3(i)]

(d) **Registration of tenders** Two issues have arisen around registration of tenders:

(i) Some companies submitting a tender may not want that fact to be published, particularly until after the closing date is known. Accordingly it is proposed to make it clear that tenders are not required to be registered until the deadline for submission. This will avoid any suggestion that placing tenders on a public register could deter people from submitting bids.

(ii) There is an anomaly in the code because tenders only have to be registered if the Councillor has part ownership of the organisation submitting the tender. This appears to be a lacuna in the drafting because contracts are required to be registered even if the councillor is an unpaid director. There is no obvious reason why tenders and contracts should be treated differently, and it is confusing to councillors. It is therefore proposed to align the requirement to register tenders with the statutory requirement to register contracts. [paragraph 24.13.2]

(e) **Revised the Nolan Principles** The Nolan Principles are set nationally by the Committee on Standards in Public Life. They are appended to the Code of Conduct. The principles have been – each principle has the same name, but the narrative has been slightly modernised. The appendix to the end of the Code has been updated.[appendix to the code]

(f) **Clarification** that a breach of the ‘Nolan Principles’ is not a breach of the Code. A number of complainants have sought to argue that a breach of the Principles can be dealt with by the Standards Committee. It is proposed to clarify that this is not the case. [paragraph 24.4.1]

3.8 There are two further issues where the Joint Committee is recommended to change the code - if approved then the version of the code will be addressed following the meeting:

(a) **Bringing the office of Councillor into disrepute.** This was a general provision which was in the previous code of conduct, but which is not in the current code. The rest of the code is quite specific about the types of conduct which are outlawed. The omission of a ‘disrepute’ clause could cause difficulties if Councillors are said to have misbehaved in a serious way which is not otherwise a breach of the code – the Authority could be left unable to take action. **The Committee are asked to agree to re-introduce a provision into the Code which states that Councillors must not bring the office of councillor into disrepute.**

(b) **Registration of contracts between Councillor and a company owned by the Council.** Councillors have to register current and past contracts and tenders with the Authority. There is no requirement to register contracts with bodies controlled by the Authority. Essex County Council owns companies and it is quite possible that the number of companies controlled by the Council will increase. **The Committee are asked to agree that Councillors be required to register contracts and tenders made between (1)**

**Councillors and their connected companies and (2) bodies controlled by their authority.**

- 3.9 The Joint Committee are asked to make recommendations to Essex County Council and to Essex Fire Authority about any changes to the code.
- 3.10 It is proposed to consult all members about the proposed changes to the Code. Any comments will be reviewed by officers and the Chairman of the Joint Standards Committee. The two authorities will then be asked to adopt the revised code at their annual meeting.
- 3.11 The Monitoring Officer designate of the Essex Fire Authority has considered a draft of this report and her comments have been incorporated in it.

**4. Financial Implications**

- 4.1 There are no financial implications to the grant of dispensations which can be dealt with inside existing resources.

**5. Legal Implications**

- 5.1 The legal implications are set out elsewhere in this report.

**6. Staffing and other resource implications**

- 6.1 This report has no staffing implications.

**7. Equality and Diversity implications**

- 7.1 In making this decision the Committee must have regard to the public sector equality duty under section 149 of the Equalities Act 2010. The Committee is required to have due regard to the need to:
  - (a) Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
  - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
    - This includes having regard to the need to:
    - (i) remove or minimise disadvantages suffered by particular equality groups;
    - (ii) take steps to meet the needs of particular equality groups;
    - (iii) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

- (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 7.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.3 The equality duty is a relevant factor in making this decision but does not impose a duty to achieve the outcomes in section 149. This equality duty is only one factor that needs to be considered, and may be balanced against other relevant factors.
- 7.4 It is not anticipated that this decision will have any adverse impact on anyone; based on their race or culture, age, sexual orientation, impairment, gender, caring role, re-assigned gender, pregnancy/maternity/paternity, marital status or civil partnership, religion/belief or socio-economic and/or health inequalities.

## **8. List of background papers**

None