

# Code of Member Conduct

## Adoption of Revised Code of Member Conduct

The Council is required to have a Code of Conduct for Members. The Code sits alongside the Localism Act 2011 which requires Councillors to register and declare 'disclosable pecuniary interests'.

The current Code of Conduct was adopted at a meeting of the County Council in October 2012. The same code has also been adopted by the Essex Fire Authority. This was the first Code under the Localism Act 2011.

A review of the Code of Conduct has been undertaken by the Joint Standards Committee. The main proposed changes are set out below. Consultation has been undertaken with:

- All members of the County Council
- All members of the Essex Fire Authority
- The Statutory 'independent persons' appointed by Essex County Council under the Localism Act 2011.
- The Monitoring Officer of the Essex Fire Authority

No adverse comments were received as a result of the consultation. The main proposed changes are set out below:

### **A new provision against 'bringing the office of Councillor into disrepute'**

The Joint Committee feel that this would be a useful general provision.

### **Simplification of the number of types of interests**

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**' – which are defined by the law and '**code interests**' – which are defined by the Code of Conduct.

### **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 is proposed that dispensations will in future be available for any kind of interest. Dispensations will only be granted if the Committee consider this appropriate.

### **Clarification around members' duty to comply with equality law**

This change is proposed because the Monitoring Officer has received allegations where complainants have sought to argue that a decision taken by Councillors is a breach of the code because (they argue) the decision is discriminatory. The proposed 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.

### **Registration of tenders**

- (i) At present the code requires immediate registration of tenders in which a member has an interest. It is proposed to amend this to say that tenders do not have to be registered until the deadline for submitting tenders. This is because tenders are normally submitted in private. It could harm competition if the fact that a company has tendered had to be placed on a public register before the deadline. Accordingly it is proposed to make it clear that tenders are not required to be registered until the deadline for submission.
- (ii) A change to correct an anomaly in the code. At present, tenders only have to be registered if the Councillor has part *ownership* of the organisation submitting the tender. Tenders do not have to be registered if the Councillor is a Director but not an owner. It is proposed to align the requirement to register tenders with the statutory requirement to register contracts.

### **Registration of contracts between Councillor and a company owned by the Council**

At present Councillors have to register current and past contracts and tenders with the Authority but 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 therefore proposed that Councillors should be required to register contracts and tenders made between (1) Councillors and their connected companies and (2) bodies controlled by their authority. It is important that Councillors know which bodies this applied to and a list of Council controlled bodies will be sent to Councillors annually.

### **Update the Nolan Principles in the appendix to the Code**

The Nolan Principles are determined nationally by the Committee on Standards in Public Life. They are included in an appendix to the Code of Conduct. The national principles have been updated – each principle has the same name, but the narrative has been modernised. The appendix to the Code has been updated to reflect these changes. These changes also need to be reflected in paragraph 3.3 of the Constitution.

### **A new provision to explain that a breach of the ‘Nolan Principles’ is not a breach of the Code**

A small number of complainants have sought to argue that an alleged breach of the Nolan Principles can be dealt with by the Standards Committee. That has never been the case - the Code of Conduct is required to be consistent with the Nolan Principles which are appended to the code for information. The Nolan Principles are not expressed as absolute obligations. The revised draft Code includes a new sentence to explain that this is the case.

### **Recommendation:**

- (1) That the revised Code of Conduct appended to this report be adopted with effect from 11 May 2016.
- (2) That the current Code of Conduct continues to apply to conduct up to and including 10 May 2016.
- (3) That the Nolan Principles set out in Paragraph 3.3 of the Constitution be updated to reflect those in the appendix to the new Code of Conduct.

[DRAFT]

**Localism Act 2011**

**Promoting and Maintaining High Standards of  
Conduct in Local Government**

**CODE OF CONDUCT FOR MEMBERS**

# CODE OF CONDUCT FOR MEMBERS [DRAFT]

## 24.1 Introduction and Interpretation

- 24.1.1 This is the Code of Conduct for Members. The Localism Act 2011 requires the Authority to have a code of conduct which is consistent with the 'Nolan Principles' determined by the Committee on Standards in Public Life. These principles are set out in the Appendix to this Code. The Code is consistent with the Nolan Principles but any breach of the principles is not by itself a breach of the Code.
- 24.1.2 As a Member you are a representative of the Authority and the public will view you as such. 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.
- 24.1.3 When words appear in **bold type** in this code they refer to a term which has been defined in paragraph 24.13.
- 24.1.4 This Code applies to all Members of the Authority including co-opted members of the Authority and its committees (including non-voting members). It is your responsibility to comply with the provisions of this Code.
- 24.1.5 You must comply with this Code whenever you act as a Member of the Authority or when you are representing the Authority – this includes postings to social media which relate to your role as a member.
- 24.1.6 When you act as a representative of the Authority on another body you must, when undertaking your role on that other body, comply with the Authority's code of conduct, except and insofar as it conflicts with any other code of conduct or legal obligation to which you are subject as part of your role on that other body.

## 24.2 General Obligations

- 24.2.1 You must treat others with respect.
- 24.2.2 You must uphold the law.
- 24.2.3 You must:
- (i) ensure that your personal behaviour promotes good relations between people with different protected characteristics and is not such as may cause the Authority to discriminate unlawfully against any person under the provisions of the Equality Act 2010 or subsequent equality legislation;
  - (ii) not bully or intimidate or attempt to intimidate any person; or
  - (iii) not do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the Authority.
- 24.2.4 You must not behave in way which would be likely to bring the office of Member of the Authority into disrepute.

## 24.3 Confidential Information

- 24.3.1 You must not 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; or

- (ii) you are required by law to do so; or
- (iii) the disclosure is made to a third party for the purpose of obtaining professional advice and that third party has, before receiving the information, agreed not to disclose the information to any other person; or
- (iv) the disclosure is-
  - (a) reasonable and in the public interest; and
  - (b) made in good faith and in compliance with the reasonable requirements of the Authority.

24.3.2 You must not prevent another person from gaining access to information to which that person is entitled by law.

#### **24.4 Conferring an Advantage or Disadvantage**

24.4.1 You must:

- (i) not use or attempt to use your position as a Member improperly to confer on or to secure for yourself or any other person, an advantage or disadvantage - financial or otherwise;
- (ii) when using or authorising the use by others of the resources of the Authority,
  - i. act in accordance with the Authority's reasonable requirements; and
  - ii. ensure that such resources are not used improperly for political purposes (including party political purposes).

#### **24.5 Publicity**

24.5. You must have regard to any applicable Code of Practice on Local Authority Publicity made under the Local Government Act 1986.

#### **24.6 Registration of Interests**

24.6.1 Subject to 24.7 below you are required to register details of your **Disclosable Pecuniary Interests** and your **Code Interests**, within 28 days of becoming a Member (or being re-elected or reappointed) in the Authority's Register of Members' Interests.

24.6.2 **Code Interests** which fall only within paragraph 24.13.2 (vi) are not registrable.

24.6.2 You must keep your entry in the register of interests up to date by notifying the Monitoring Officer of any changes to your interests referred to above within 28 days of the change occurring.

#### **24.7 Publication of the Register of Interests**

24.7.1 The Monitoring Officer will arrange for the Register of Interests to be published on the Authority's website.

24.7.2 Where the nature of one or more of your interests is such that you and the 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 then copies of the Register available for inspection and any published version of the Register will not include details of the interest but may state that you have an interest, details of which have been withheld in accordance with this Code of Conduct.

- 24.7.3 You must notify the Authority's Monitoring Officer within 28 days of becoming aware of any change of circumstances which means that information excluded from the register under 24.7.1 is no longer sensitive information.
- 24.7.4 You must review your entry on the register of interests at least once in every calendar year and notify the Authority's Monitoring Officer of any changes.

## **24.8 Declaration of Interests at Meetings**

- 24.8.1 For the purposes of this paragraph, a meeting means any meeting of the Authority including the Cabinet, any committee, sub-committee, joint committees, joint sub-committees or area panels.
- 24.8.2 Where any matter to be considered at a meeting of the Authority at which you are present relates to or may have an impact upon a body or matter in which you have a **Disclosable Pecuniary Interest** or a **Code interest**, you must disclose the existence and nature of that interest to the meeting.
- 24.8.3 In addition you must withdraw from the room where the meeting considering the business is being held and must not participate in any debate or vote on the matter unless you have received a dispensation from the Monitoring Officer or the Standards Committee if:
- (a) you have a **Disclosable Pecuniary Interest** in that business; or
  - (b) you have a **Code interest** which is one that 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 of the public interest.
- 24.8.4 When declaring an interest at a meeting you need not disclose the nature of the interest if you and the Monitoring Officer have agreed that it ought not appear on the public register of interests, but you must otherwise comply with the rules about declarations of interest.

## **24.9 Cabinet Member Decisions**

- 24.9.1 Where a report is presented to you and you have an interest which would prevent you from participating in a meeting which was considering it, you must take no action in relation to the report unless you have first obtained a dispensation from the Monitoring Officer or the Standards Committee.
- 24.9.2 If a report is presented to you and you cannot take the decision because you have an interest you must notify the Monitoring Officer of the interest and that you were unable to act. The Monitoring Officer will arrange for this to be recorded with the decision.

## **24.10 Disclosure of Interests in Discussions and Correspondence**

- 24.10.1 If you have an interest in any matter which you would be required to declare at a meeting, and that matter is raised in any discussion or correspondence, whether in person, by telephone or email or otherwise, with any member, employee, contractor or agent of the Authority you:
- (i) must make a full disclosure of that interest at the outset of any discussions or correspondence, or as soon as the matter is raised; and
  - (ii) must not seek improperly to influence a decision about that matter.

## 24.11 Dispensations

24.11.1 The Authority's Monitoring Officer or the Standards Committee may, in the circumstances set out in 24.11.2, grant a dispensation which permits you to

- (i) remain in the room,
- (ii) speak,
- (iii) vote or make a decision

on a matter, notwithstanding that you have an interest in it. Any such dispensation must specify the period for which it has effect, which may not exceed four years.

24.11.2A dispensation may be granted by the Monitoring Officer or the Standards Committee if the person with authority to grant the dispensation:

- (i) considers that without the dispensation the number of persons prohibited from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,
- (ii) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,
- (iii) considers that granting the dispensation is in the interests of persons living in the Authority's area,
- (iv) considers that without the dispensation each member of the Authority's executive would be prohibited from participating in any particular business to be transacted by the Authority's executive, or
- (v) considers that it is otherwise appropriate to grant a dispensation.

## 24.12 Register of Gifts and Hospitality

24.12.1 You must, within 28 days of receipt, notify the Authority's Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £25 which you have accepted as a Member from any person or body other than the Authority.

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

24.11.3 This duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality comes within any description approved by the Authority for this purpose.

## 24.13 Definitions

24.13.1 In this Code the following phrases have the following meanings:

**'body controlled by the Authority'** means a company or similar organisation where the Authority owns a majority of the shares or the Authority is entitled to nominate a majority of the members or directors or any company owned by such a body.

**'body in which the relevant person has a beneficial interest'** means a firm in which you or your spouse or partner is a partner or a body corporate of which the relevant

person is a director (whether or not remunerated), or in the securities of which you or your spouse or partner have a beneficial interest

**'disclosable pecuniary interest'** is an interest defined as such by the Localism Act 2011 or regulations made thereunder.

24.13.2 You have a **'Code interest'** in matters falling within any of the descriptions which are not a **disclosable pecuniary interest**:

- (i) Any contract for goods, services or works which has not been fully discharged between you, your spouse or partner or a body in which the relevant person has a beneficial interest) and a **body controlled by the Authority**;
- (ii) Any contract with the Authority which has expired within the last 2 years and which was, when it was in force, a **disclosable pecuniary interest**.
- (iii) Any tender, bid or quotation submitted within the last 2 years to the Authority which would, if accepted, have amounted to a **disclosable pecuniary interest**. Tenders, bids or quotations are not required to be registered until 28 days after the last date for the submission of tenders, bids or quotations.
- (iv) Any body of which you are a member or in which you hold a position of general control or management and to which you have been appointed or nominated by the Authority;
- (v) Any other body of which you are a member or in which you hold a position of general control or management -
  - a. which exercises functions of a public nature;
  - b. which is directed to charitable purposes; or
  - c. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);
- (vi) Any matter which might reasonably be regarded as affecting the well-being or financial position of:
  - (a) yourself
  - (b) a body in which you have a **Disclosable Pecuniary Interest** or a **Code interest**,
  - (c) a friend, relative or close associate

to a greater extent that the majority of other council tax payers or inhabitants of the electoral division affected by the decision.

24.13.3 Notwithstanding 23.12.4, an interest which is a **Disclosable Pecuniary Interest** is not a **Code interest**.

***For guidance the following note summarises the statutory definition at March 2016. The Monitoring Officer will notify all Members and update this part of the code if the law changes.***

*A member has a Disclosable Pecuniary Interest if they or their partner have an interest of a description set out in paragraphs (1) to (7) below*

*In this context 'partner' means spouse, civil partner or a person the member is living with as a spouse or civil partner. Members only have to declare interests of their*

*partner to the extent that they know about them.*

*Disclosable Pecuniary Interests are:*

- (1) Any employment, office, trade, profession or vocation carried on for profit or gain;*
- (2) Any payment or provision of any other financial benefit (other than from the Council) made or provided within the previous twelve months in respect of any expenses incurred by the member in carrying out duties as a Member, or towards 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;*
- (3) Any contract for goods, services or works which has not been fully discharged between the relevant person (or a body in which the relevant person has a beneficial interest) and the Council;*
- (4) Any beneficial interest in any land in the Council's area;*
- (5) Any licence of any land in the Council's area (alone or jointly with others) to occupy land for a month or longer;*
- (6) Any tenancy where to the Member's knowledge (a) the landlord is the Council and (b) the tenant is a body in which a relevant person has a beneficial interest;*
- (7) Any beneficial interest in securities of a body where:
  - 1. that body (to the Member's knowledge) has a place of business or land in the area of the Council; 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) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.***

*Note that the Standards Committee has a practice of granting dispensations to members with respect to their or their partner's role in another public body.*

## CODE OF CONDUCT FOR MEMBERS - APPENDIX

### THE NOLAN PRINCIPLES

#### ***1. Selflessness***

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

#### ***2. 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.

#### ***3. Objectivity***

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

#### ***4. 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.

#### ***5. 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.

#### ***6. Honesty***

Holders of public office should be truthful.

#### ***7. 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.