

Standards Committee

22 March 2018



Review of the Members Code of Conduct

Report of Helen Lynch, Head of Legal & Democratic Services and Monitoring Officer.

Purpose of the Report

- 1 To invite members to approve a revised Code of Conduct for Members of the Authority.

Background

- 2 Under section 27 of the Localism Act 2011, Durham County Council has a statutory duty to promote and maintain high standards of conduct, whether of its Members or Co-opted Members. To comply with this duty, the Council must adopt a code dealing with the conduct that is expected of Members and co-opted members when they are acting in that capacity.
- 3 The only requirement for the Code is that its terms, when viewed as a whole, are consistent with the Nolan principles of public life:
 - (a) selflessness;
 - (b) integrity;
 - (c) objectivity;
 - (d) accountability;
 - (e) openness;
 - (f) honesty;
 - (g) leadership.
- 4 The Code must also include provisions that the Council considers appropriate in respect of the registration in its register, and disclosure, of:
 - (a) disclosable pecuniary interests; and
 - (b) interests other than disclosable pecuniary interests.

Changes to the Code of Conduct

- 5 The existing code of conduct for members, affirmed by the Council at its last Annual General Meeting in May 2017, is attached at Appendix 2 to this report, with the proposed code of conduct prepared for consideration by Members attached at Appendix 3.
- 6 The Council's Monitoring Officer reviewed the Code of Conduct and noted that whilst the statutory provisions regarding Disclosable Pecuniary Interests were included, the provisions in relation to non-registrable personal or prejudicial interests were incomplete and could be simplified. The Code has therefore been updated to refer to the requirements in relation to Disclosable Pecuniary Interests (which must be declared by law) and "Other relevant interests" (which are a local requirement).
- 7 It is a legislative requirement that the Member Code of Conduct is consistent with the Nolan Principles of Public Life (see para 3 above). These principles are included within the current Code as an appendix. In the revised draft, these appear at the outset, followed by the general obligations on Members, which flow from the principles.
- 8 Section three of the current declarations of interests form currently includes provision for the recording of gifts and hospitality, the requirement to notify of gifts and hospitality (whether accepted or not). However, the current Code does not include the requirement for Members to declare gifts and hospitality. Therefore, an appropriate provision has been included in the revised draft to reflect this requirement. Historically, Members have been required to declare gifts and hospitality valued at £25 or more. The new Code proposes a slight increase in this threshold to £50 to reflect inflationary rises in the costs of gifts and hospitality since the threshold was first set several years ago.
- 9 Members will also note that the revised Code of Conduct has been updated to remove duplication and ensure that plain English is used as far as possible. Whilst the changes may appear radical, they are largely cosmetic in nature. The revised Code does not seek to impose additional obligations on Members than currently exist.

Recommendations and reasons

- 10 Members are requested to:
 - (a) Consider the revised draft Member Code of Conduct and provide any comments / further amendments; and
 - (b) Recommend to Council that the revised Member Code of Conduct is adopted as part of the Annual Review of the Constitution.

Background papers

None

Contact: Helen Lynch Tel: 03000 269732

Appendix 1: Implications

Finance – There are no finance implications associated with this report.

Staffing – There are no finance implications associated with this report.

Risk – There is no direct risk to the organisation as a result of the contents of this report.

Equality and Diversity / Public Sector Equality Duty – There are no public sector equality duty implications in relation to this report.

Accommodation– None

Crime and Disorder– Not applicable.

Human Rights– Not applicable.

Consultation– The draft Code will be shared with the Political Group Leaders prior to it being presented to Council as part of the wider review of the Annual Constitution. This will provide them and their Groups with an opportunity to consider and comment on the report.

Procurement– Not applicable.

Disability Issues– Not applicable.

Legal Implications– As the report explains, the Localism Act 2011 requires the Council to adopt a Member Code of Conduct, which is consistent with the Nolan Principles on Public Life. The revised Code reflects those principles and highlights their importance by bringing them to the forefront of the document, with the consequential obligations on Members flowing from those principles.

Appendix 2: Existing Code of Conduct for Members

**CODE OF CONDUCT
FOR MEMBERS**

Adopted by Durham County Council on 25 July 2012

CODE OF CONDUCT FOR MEMBERS

The County Council of Durham Code of Conduct for Members

The County Council of Durham (“the Council”) has adopted the following code which has effect from 26th July 2012 and which sets out the conduct that is expected of elected and co-opted members of the Council when they are acting in that capacity.

This means the code applies whenever you (a) conduct the business of the Council (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Council.

‘Co-opted member’ means any person who is a member of any committee or sub-committee of the Council with a right to vote but is not one of its elected members

The code is intended to be consistent with Nolan’s Seven Principles of Public Life, and should be read in the light of those principles, namely that Council Members will act with selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Those Principles are not part of this Code but are set out in full at Annex 1 for information.

Part 1 - General Conduct

1. You must treat others with respect, including Council officers and other elected members.
2. You must not bully any person (including specifically any Council employee) and you must not intimidate or improperly influence, or attempt to intimidate or improperly influence, any person who is involved in any complaint about any alleged breach of this code of conduct
3. You must not do anything which compromises or is likely to compromise the impartiality of anyone who works for or on behalf of the Council.
4. You must not conduct yourself in a manner which could reasonably be regarded as bringing the Council, or your office as a member of the Council, into disrepute.
5. You must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person any advantage or disadvantage.
6. You must comply with any Protocol adopted by the Council which seeks to regulate the conduct of its elected members or co-opted members and which the Council has specifically declared should fall within the provisions of this code of conduct and which is listed in Annex 4 to this Code.

7. When using or authorising the use by others of the resources of the Council, you must act in accordance with the Council's reasonable requirements (as set out in such protocol as it may adopt from time to time for these purposes) and must ensure they are not used for party political purposes.
8. You must not prevent, or attempt to prevent, another person from gaining access to information to which they are entitled by law.
9. You must not disclose information which is given to you in confidence, or information which you believe or ought reasonably to be aware is of a confidential nature, unless:
 - (a) You have the consent of a person authorised to give it; or
 - (b) You are required by law to do so; or
 - (c) 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
 - (d) The disclosure is reasonable and in the public interest and made in good faith.
10. Where you have been involved in making any decision by the Council which is subsequently subject to scrutiny by an overview and scrutiny committee of the Council, you must not take part in that scrutiny process except to the extent you may be invited by the committee to give evidence to, or otherwise assist, it. In this paragraph, 'scrutiny' means the formal examination of a policy or decision previously approved or taken by or on behalf of the Council in order to reach a view as to its merits or effectiveness.

Part 2 - Registration of interests

11. You must register in the Council's Register of Members Interests information about your registerable personal interests. In this code of conduct 'your registerable personal interests' means
 - (a) any Disclosable Pecuniary Interest as set out in Annex 2; or
 - (b) any other interest held by you as set out in Annex 3.

You must register information about your registerable personal interests by giving written notice to the Monitoring Officer, who maintains the Register, within 28 days of:

- your appointment as a member of the Council; and
- any change taking place in your registerable personal interests.

(Note: Failure without reasonable excuse to register a Disclosable Pecuniary Interest is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)

Where you think that disclosure of the details of any of your registerable personal interests could lead to you, or a person connected with you, being subject to violence or intimidation, the Monitoring Officer may at your request make a note on the Register that you have a personal interest, details of which are withheld.

Part 3 – Non-registerable interests

12. You will have a non-registerable personal interest when you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are, or ought reasonably to be, aware that a decision in relation to an item of business which is to be transacted might reasonably be regarded as affecting your well being or financial position, or the well being or financial position of a person described in paragraph 13 to a greater extent than most inhabitants of the area affected by the decision.

13. The persons referred to in paragraph 12 are:

- (a) a member of your family;
- (b) any person with whom you have a close association;
- (c) in relation to persons described in (a) and (b), their employer, any firm in which they are a partner, or company of which they are a director or shareholder.

(Note:

- (a) “A member of your family” means: your partner (i.e. your spouse, civil partner or anyone with whom you live in a similar capacity); your parent or parent-in-law; any child, stepchild or sibling of you or your partner; your grandparent, grandchild, aunt, uncle, nephew or niece; and the partners of any of those people.
- (b) You have a “close association” with someone if your relationship is such that a reasonable member of the public might think you would be prepared to favour or disadvantage that person when deciding a matter which affects them).

14. When you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are aware that you have a non-registerable interest in an item of business (as defined in paragraph 12) you must disclose that interest to the meeting before consideration of that item begins or (if later) when you become aware of the interest.

Part 4 - Non-Participation in Council Business

15. When you attend a meeting of the Council or Cabinet, or one of their committees or sub-committees, and you are aware that you have a Disclosable Pecuniary Interest or that the criteria set out in paragraph 16 are satisfied in relation to any matter to be considered, or being considered at that meeting, you must :

Declare that fact to the meeting;

- (a) Not participate (or further participate) in any discussion of the matter at the meeting; and
- (b) Not participate in any vote (or further vote) taken on the matter at the meeting;
- (c) Leave the room whilst the matter is being discussed.

16. The criteria for the purposes of paragraph 15 are that:

- (a) You have a registerable or non-registerable personal interest in the matter which is such that a member of the public knowing the relevant facts would reasonably think it so significant that it is likely to prejudice your judgement of the public interest; and either
- (b) The matter will affect the financial position of yourself or one of the persons or bodies referred to in paragraph 13 or in any of your register entries; or
- (c) The matter concerns a request for any permission, licence, consent or registration which relates to or affects any of the persons referred to in paragraph 13 or in any of your register entries.

17. If a Council function can be discharged by you as a member acting alone and you are aware you have a registerable or non-registerable personal interest in any matter to be dealt with by in that way which meets the criteria set out in paragraph 16, you shall not deal with that matter in any way (except to enable it to be dealt with by someone else).

(Note: Failure, without reasonable excuse, to comply with paragraphs 15 to 17 in relation to a Disclosable Pecuniary Interest is a criminal offence under section 34 Localism Act 2011 as well as being a breach of this code)

18. Paragraphs 15 to 17 do not apply if (i) you have a relevant dispensation under section 33 of the Localism Act 2011 or (ii) the matter in question relates to any of the following functions of the Council:

- (a) housing, where you are a Council tenant provided the matter does not relate particularly to your tenancy or lease;
- (b) school meals or school transport, where you are a parent or guardian of a child in full-time education or a parent governor of a school, unless the matter relates particularly to the school your child attends;
- (c) statutory sick pay where you are in receipt of, or entitled to 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.

Annex 1 to Code of Conduct

Nolan's Seven Principles of Public Life

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.

Annex 2 to Code of Conduct

Disclosable Pecuniary Interests

(as defined by Regulations made by the Secretary of State under section 30 Localism Act 2011)

Please Note: The following interests are Disclosable Pecuniary Interests if they are an interest of either (a) **yourself**, or (b) **your spouse or civil partner**, or (c) **a person with whom you are living as husband and wife**, or (d) **a person with whom you are living as if you were civil partners** (all of whom are referred to as “relevant persons”):-

Employment, office, trade, profession or vocation - Any employment, office, trade, profession or vocation carried on for profit or gain.

Sponsorship - Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you 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.

Contracts - Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the Council —

- (a) under which goods or services are to be provided or works are to be executed; and
- (b) which has not been fully discharged.

Land - Any beneficial interest in land which is within the area of the Council.

Licences - Any licence (alone or jointly with others) to occupy land in the area of the Council for a month or longer.

Corporate tenancies - Any tenancy where (to your knowledge)—

- (a) the landlord is the Council; and
- (b) the tenant is a body in which the relevant person has a beneficial interest.

Securities - Any beneficial interest in securities of a body where—

- (a) that body (to your knowledge) has a place of business or land in the area of the Council ; and
- (b) either -

- (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or

- (ii) 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: In the above descriptions, the following words have the following meanings –

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

Annex 3 to Code of Conduct

Other Registerable Personal Interests

The other interests which you must register under paragraph 11(b) of the code are:

1. Any body of which you are a member (or in a position of general control or management) to which you are appointed or nominated by the Council;
2. Any body which (i) exercises functions of a public nature or (ii) has 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);
3. Any person from whom you have received within the previous three years a gift or hospitality with an estimated value of more than £50 which is attributable to your position as an elected or co-opted member of the Council.

Note: These mean only your interests and not those of your spouse or civil partner

Annex 4 to Code of Conduct

Associated Protocols

The Council has adopted the following Protocols which are intended to regulate the conduct of its elected members or co-opted members and which the Council has specifically declared should fall within the provisions of this code of conduct pursuant to paragraph 6 of the code:

Code of practice for members and officers dealing with Planning Matters
Protocol on Member/Officer Relations

Appendix 3: Proposed Code of Conduct for Members

**CODE OF CONDUCT
FOR MEMBERS**

Adopted by Durham County Council on XXX

CODE OF CONDUCT FOR MEMBERS

The County Council of Durham Code of Conduct for Members

The County Council of Durham (“the Council”) has adopted the following code which has effect from XXXX and which sets out the conduct that is expected of elected and co-opted members of the Council when they are acting in that capacity.

This means the code applies whenever you (a) conduct the business of the Council (including the business of your office as an elected councillor or co-opted member) or (b) act, claim to act or give the impression you are acting as a representative of the Council.

‘Co-opted member’ means any person who is a member of any committee or sub-committee of the Council with a right to vote but is not one of its elected members

Part 1 – General Conduct

Members and co-opted Members of Durham County Council (“the Council”) are expected to undertake their duties as follows:

1. Represent the community and work constructively with employees and partner organisations to ensure the area is a safer place to live, work and visit.
2. Behave in a manner that is consistent with the following principles to achieve best value for residents and maintain public confidence in the Council:
 - a. Selflessness:** act solely in terms of the public interest and not act in such a way as to gain financial or other material benefits for themselves, their family or friends;
 - b. Integrity:** not placing themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties;
 - c. Objectivity:** make choices on merit, in carrying out public business, including when making public appointments, awarding contracts, or recommending individuals for rewards and benefits;
 - d. Accountability:** be accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office;
 - e. Openness:** be as open as possible about all the decisions and actions they take, and give reasons for decisions and restrict information only when the wider public interest or the law clearly demands;
 - f. Honesty:** declare any private interests relating to their public duties and take steps to resolve any conflicts arising in a way that protects the public

interest.

g. Leadership: promote and support these principles by leadership and example.

3. Act in accordance with the principles in paragraph 2 and, in particular:
 - (a) Champion the needs of residents - the whole community and all constituents, including those who did not vote for them - and put the public interest first;
 - (b) Deal with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially;
 - (c) Not allow other pressures, including the financial interests of themselves or others connected to them, to deter them from pursuing the interests of the Council or the good governance of the Council in a proper manner;
 - (d) Exercise independent judgement and not compromise their position by placing themselves under obligations to outside individuals or organisations who might seek to influence the way they perform their duties as a Member / Co-opted Member of the Council;
 - (e) Listen to the interests of all parties, including relevant advice from statutory and other professional officers, take all relevant information into consideration, remain objective and make decisions on merit;
 - (f) Be accountable for decisions and cooperate when scrutinised internally and externally, including by local residents;
 - (g) Contribute to making the Authority's decision-making processes as open and transparent as possible to ensure residents understand the reasoning behind those decisions and are informed when holding the Authority to account but restricting access to information when the wider public interest or the law requires it;
 - (h) Behave in accordance with all legal obligations, alongside any requirements contained within the Council's policies, protocols and procedures, including on the use of the Council's resources;
 - (i) Value colleagues and staff and engage with them in an appropriate manner and one that underpins the mutual respect that is essential to good local government;
 - (j) Always treat people with respect, including the organisations and public they engage with and work alongside;
 - (k) Provide leadership through behaving in accordance with these principles

when championing the interests of the community with other organisations as well as within this Authority;

- (l) Not disclose information given to them in confidence by anyone or information acquired, which they believe, or ought reasonably to be aware, is of a confidential nature, without express authority and/or unless the law requires it.

Part 2 - Registration of interests

Register of Interests

11.1 Members must:

- (a) register and, where appropriate, disclose those disclosable pecuniary interests that they are obliged to declare under the Localism Act and associated regulations; and
- (b) register any body of which they are a member (or in a position of general control or management) to which you were appointed or nominated by the Council; and
- (c) register details of their membership of any organisation or body whose rules or requirements of membership could be regarded as suggesting a degree of loyalty to that organisation or body. This could arise by reason of an organisation having an obligation of secrecy about its rules, its membership or conduct and/or a commitment of allegiance or support to that organisation or body. Such organisations or bodies may or may not be charitable concerns and they may also have a local, regional, national or international aspect; and
- (d) register details of membership of any trade union within the meaning of Section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992.

11.2 Registration of interests shall be completed by provision of details upon a signed prescribed form which is submitted to the Monitoring Officer at Durham County Council. Members must ensure they keep the register updated and acknowledge that its contents will be published on the Authority's website and will be open to the public to inspect.

12. Disclosable Pecuniary Interests Entered on the Register

12.1 If Members are present at a meeting of the Authority and

- (a) they are aware that they have a disclosable pecuniary interest under paragraph 11.1(a) above in any matter to be considered or being considered at the meeting; and
- (b) the interest is entered in the Authority's register

they may not participate in any discussion or further discussion of an item of business or in any vote or further vote taken on that item which affects or relates to the subject matter in which they have such an interest; and they will leave the room where the meeting is held while any discussion or voting takes place.

13. Disclosable Pecuniary Interests NOT Entered on the Register

- 13.1 If Members are present at a meeting of the Authority and
- (a) become aware that they have a disclosable pecuniary interest under paragraph 11.1(a) above in any matter to be considered or being considered at the meeting; **and**
 - (b) the interest is not entered in the Authority's register, they must disclose the interest to the meeting. Furthermore, they may not participate or further participate in any discussion of the matter at the meeting or participate in any vote or further vote taken on the matter at the meeting and will leave the room where the meeting is held while any discussion or voting takes place.
- 13.2 If an interest referred to in 11.1(a) above is not entered on the Authority's register and is not the subject of a pending registration, Members must notify the Authority's Monitoring Officer of the interest within 28 days of the date of the disclosure.
- 13.3 Members with the power to discharge an Authority function acting alone will have a disclosable pecuniary interest in any matter to be dealt with or being dealt with by them in the course of discharging that function:
- (a) they may not take any steps, or any further steps, in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by them); **and**
 - (b) If the interest is not entered on the Council's register and is not the subject of a pending registration, they must notify the Council's Monitoring Officer of the interest within 28 days of becoming aware of the interest.

14 Sensitive Interests

- 14.1 This applies to a situation where a Member considers that the disclosure of the details of your interest – including that of your spouse or partner – could lead to you, or a person connected with you, being subject to violence or intimidation.
- 14.2 In such circumstances you should share your concerns with the Council's Monitoring Officer. If the Monitoring Officer agrees with you, then the details of the interest will not be included in the Council's published Register of Interests, but the Register may state that you had registered an interest the details of which had been withheld under Section 32 of the Localism Act 2011.

14.3 If the Monitoring Officer has accepted that you have a sensitive interest under Section 32 of the Localism Act 2011, you should declare the existence of the interest at any meeting at which you are present but you need not declare the details of the interest.

14.4 If circumstances change and the information excluded from the Register on the grounds of sensitivity is no longer sensitive information, the Member must notify the Monitoring Officer within 28 days.

15. **Other Relevant Interests**

15.1 Members may have an Other Relevant Interest (which is not a disclosable pecuniary interest) in any matter to be considered or being considered at the meeting) where:

- (a) a decision in relation to that matter might reasonably be regarded as affecting the well-being or financial standing of them or a member of their family or a person with whom they have a close association, or an organisation or body under paragraph 11.1(b), 11.1(c) or 11.1(d) above, to a greater extent than it would affect the majority of the Council Tax payers, ratepayers or inhabitants of the ward or electoral area for which they have been elected or otherwise of the authority's administrative area; **and**
- (b) the interest 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 their judgement of the public interest.

15.2 Members with an Other Relevant Interest as described in 14.1. above,—

- (a) 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; **and**
- (b) must not participate in any discussion or further discussion of an item of business or in any vote or further vote taken on that item which affects or relates to the subject matter in which they have an Other Relevant Interest at any meeting at which they are present and will leave the room where the meeting is held while any discussion or voting takes place.

16. **Gifts and Hospitality**

16.1 Members 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 they have been offered as a member from any person or body other than the Authority, whether the offer is accepted or declined.

16.2 The Monitoring Officer will place any notification received under paragraph 16.1 on a public register of gifts and hospitality.

16.3 The duty to notify the Monitoring Officer does not apply where the gift, benefit or hospitality has been approved by the Authority for this purpose.