

Report to: Standards Committee



Date of Meeting 10th November 2021

Document classification: Part A Public Document

Exemption applied: None

Review date for release N/A

Members' Code of Conduct

Report summary:

To advise the committee of the work of the Standards Working Group and for the committee to consider a revised Members' Code of Conduct.

Is the proposed decision in accordance with:

Budget Yes No

Policy Framework Yes No

Recommendation:

That the Standards Committee consider;

- (1) Whether to recommend the revised Members' Code of Conduct, or a version of it, to Council for adoption.
- (2) If the recommended draft Code includes the obligations in relation to declaration of interests as currently drafted, Members will need to consider the approach to granting of dispensations.

Reason for recommendation:

It is for Members to determine whether they wish to recommend the revised Code or a revised Code to the Council and related arrangements.

Officer: Henry Gordon Lennox, Monitoring Officer

Portfolio(s) (check which apply):

- Climate Action and Emergency Response
- Coast, Country and Environment
- Council and Corporate Co-ordination
- Democracy, Transparency and Communications
- Economy and Assets
- Finance
- Strategic Planning
- Sustainable Homes and Communities
- Tourism, Sports, Leisure and Culture

Equalities impact Low Impact

Climate change Low Impact

Risk: Low Risk;

Links to background information:

[EDDC Members' Code of Conduct](#)

[LGA Model Code of Conduct](#)

[LGA Guidance on Model Code of Conduct](#)

[Standards Working Group Minutes 13th August 2021](#)

[Standards Working Group Minutes 5th October 2021](#)

[Standards Working Group Minutes 21st October 2021](#)

Link to [Council Plan](#)

Priorities (check which apply)

- Better homes and communities for all
- A greener East Devon
- A resilient economy

Report in full

1. At the January 2021 meeting, Members resolved as follows;

- (1) That the Committee noted the content of the Monitoring Officer's report in relation to the LGA's Model Code of Conduct and East Devon's Members' Code of Conduct and agreed that there should be a further review of the content of the Members' Code of Conduct with a view to possible adoption of a new or revised Code at the Annual Council Meeting in May 2021.*
- (2) That a working group be established comprising ten members, politically balanced, and that delegated authority be given to the Monitoring Officer in consultation with Group Leaders to agree the membership, for the purpose of progressing a further review of the Members' Code of Conduct and that stakeholder engagement should be included both during the review and as part of the final review of any proposals.*

2. The Working Group met on 13th August, 5th October and 21st October. The Group has reviewed the LGA Model Code of Conduct against East Devon's Members' Code of Conduct. Both of these documents can be found in the background links. The comparative document that was used to undertake the exercise is at **Appendix 1** and it has been updated to include the outcomes (in red) from the discussions. The minutes of the meetings where the discussion points can be seen are also in the background links. The LGA Guidance on the Model Code of Conduct is also in the background links.

3. The Working Group has agreed that a revised version of the Code should be presented to the Standards Committee for consideration. This document is attached at **Appendix 2** and it is recommended by the Working Group to this committee to consider whether it wishes to recommend it to Council for adoption.

Specific points to note / consider

4. The EDDC Code was not very far adrift from the LGA Model Code. The comparative document is useful in showing where the differences were and how the Working Group decided to progress matters. There are some matters though that caused a fair amount of debate and discussion or which require further consideration. These are detailed below.

5. Firstly, in relation to register of interests and identifying land. Paragraph 6 requires Members to register interests in accordance with the requirements of Appendix B. Appendix B requires, as is currently the case, that Members must register land that they own / reside at. It has been a long standing requirement that what is contained in the register should be sufficient to describe the land. For standard residential properties this is straightforward but it is not so easy for bare land (such as farms or isolated parcels of land for example) because the description doesn't necessarily help a member of the public identify the extent of the land. In the guidance note to Members in relation to completing register of interests and on this issue it states *'It is necessary to ensure that sufficient information is given to enable the property to be identified – this should be by stating an address but can be by other description (such as field numbers) where an address can't be used.'*
6. As now presented, the draft Code makes it a requirement that sufficient information to describe the land should be included and that Members *'should...also provide HMLR title numbers or field numbers to enable land to be identified'*. It is felt that this represents the appropriate balance given that this information should be known or relatively easily obtainable by owners. Using a map would be problematic in relation to large land ownerships and also due to the inability to readily 'attach' it to the online register in ModernGov.
7. Secondly, Members should be aware that in relation to declaration of interests at meetings, the LGA Model Code effectively reintroduces what was previously known as the 'personal and prejudicial' category of interest, although it is not phrased in that way. Currently, Members with a Disclosable Pecuniary Interest (DPI) must leave the room during the discussion and vote but where they have a Personal Interest they can remain and vote.
8. Under the draft Code, where a matter 'directly relates' to a Member's DPI then you must leave the room during discussion and vote which as noted above, is the position currently. Where a matter 'directly relates' to a Member's Other Registerable Interest or the financial interest or well-being of a Member (but which was not a registerable interest) then Members can speak if the public can but otherwise have to leave the room during the discussion and vote. Where the matter 'affects' the Member's own financial interest or well-being, that of a relative or close associate or which relates to a body required to be registered under Other Registerable Interests, this interest must be disclosed. If the councillor, relative or close associate or body is affected to a greater extent than most people and the reasonable person would think that the Member's judgement would be clouded then the Member must leave the room during the discussion and vote but they could speak if the public were entitled to speak. Where they were not affected to a greater extent or would not be viewed as having a clouded judgement then having disclosed they could remain to discuss the matter and vote. This effectively operates to preclude involvement where a Member objectively viewed could not put the public interest first. If the objective view was that a Member could put the public interest first then they could be fully involved despite there being an interest.
9. Finally, Members will note that where there is a DPI, they can remain and vote where a dispensation is granted. In relation to DPIs, the Localism Act details that an authority may only grant a dispensation where, having had regard to all relevant circumstances, the authority;
 - (a) *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,*
 - (b) *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,*

- (c) *considers that granting the dispensation is in the interests of persons living in the authority's area,*
- (d) *if it is an authority [...] operating executive arrangements, 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*
- (e) *considers that it is otherwise appropriate to grant a dispensation.*

10. Currently the Monitoring Officer has delegated authority in relation to (a) and (b) above while the Standards Committee must decide on (c) – (e). While there is a legal basis for dispensations in relation to DPs, there are no such arrangements in relation to dispensations for Other Registerable Interests or Non-Registerable Interests.
11. The LGA Guidance recommends that Councils should adopt the same criteria in relation to Other Registerable Interests and Non-Registerable as applies to DPs. This is considered appropriate but Members will need to determine if there is agreement to this and also whether the existing framework – being the split in decision makers – is acceptable. On the assumption that a revised Code is recommended for adoption and it includes the obligations in relation to declarations of interest as currently drafted, then the issue of dispensations will need to be dealt with through minor changes to the Constitution.
- Next steps
12. Members will recall that revised arrangements for dealing with complaints that a Member has breached the Code of Conduct were recommended to Council for consideration. October's Council agreed them and therefore a report will be presented to December's Council seeking approval to the necessary changes to the Constitution and related arrangements for bringing them in.
13. If this Committee was minded to make a recommendation to adopt a revised Code, then the intention would be to combine this as part of that report to enable a holistic approach to be taken in relation Members' Code of Conduct matters.
14. The above said, Members should be aware that there will not have been any stakeholder engagement in the consideration of the Members' Code of Conduct process if it is to be presented to December's Council. However, it is worth remembering that it is for each authority to adopt a Code of Conduct. The Town and Parish Councils are not beholden to the Code that East Devon District Council adopts. In that regard, Members may therefore consider it appropriate to proceed and to inform all the Towns and Parishes that we have adopted a revised Code after the event and suggest that they now undertake a review of their own Codes of Conduct. Those Councils will be being notified of the changes to the complaint process in any event.
15. Assuming a revised Code in the attached form or similar is to be adopted, or recommended for adoption in December, then there will need to Member training, revisions to the Register of Interest form in ModernGov which Members will need to revisit to ensure that they remain compliant. This will all start to happen if Members take the decision to recommend a revised Code to Council in order that it can all be dealt with in a timely manner.

Financial implications:

There are no financial implications requiring comment.

Legal implications:

It is for Full Council to adopt the Member's Code of Conduct as it forms part of the Constitution. It is for Members to decide on an appropriate form of Code, however it must, when viewed as a whole, be compliant with the Nolan principles and ensure that it deals with the registration of and declaration of disclosable pecuniary interests and such other interests as the Council considers appropriate.