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STANDARDS COMMITTEE

3 AUGUST 2022

REPORT OF THE MONITORING OFFICER

A.1 LOCAL GOVERNMENT ASSOCIATION MODEL MEMBERS' CODE OF CONDUCT – EXPLORATION OF THE DIFFERENCES BETWEEN DECLARING INTERESTS

(Report prepared by Karen Townshend and Lisa Hastings)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

For the Standards Committee to continue their review of the elected Members' Model Code of Conduct (the Model Code) as authored by the Local Government Association (LGA), in comparison to Tendring District Council's Members' Code of Conduct (the TDC Code), for eventual determination as to whether to recommend the Model Code to Full Council for adoption.

EXECUTIVE SUMMARY

In 2018 the Standards Committee recommended to full Council that the Council adopted the Members' Code of Conduct as detailed within Part 6 of the Constitution and attached as Appendix A. The Code sets out the standards, values and rules of conduct that elected Members are expected to abide by.

In May 2021, a final version of the Members' Model Code of Conduct was authored and released by the LGA. The aim of the Model Code is to provide consistency for Members across Parish, Town, District and County Councils, especially for those Members representing two or more electorates (also known as 'dual or triple hatters').

As part of its work programme, the Standards Committee is requested to review the TDC Code in comparison with the Model Code, together with associated guidance, and recommend to Full Council as to whether the Model Code should be adopted, to review and retain the existing TDC Code or amend it. Should the Committee wish to recommend that the Model Code be adopted, it has previously been proposed that implementation would not take effect until the new municipal period following the 2023 elections.

The Model Code is attached at Appendix B.

At the Committee's last meeting in April 2022, Members were appraised of the differences between the Rules of Conduct within the TDC Code compared with the Model Code. The provisions relating to interests would be considered separately and are the purpose of this report. The TDC Code has two types of Members' Interests (Disclosable Pecuniary Interests (DPI) and Personal Interests. The Model Code refers to these as Disclosable Pecuniary Interests, Other Registrable Interests and Non-Registrable Interests. It may appear from first glance that the Model Code either covers interests in more detail or an additional type; however in essence they are broadly similar as the TDC Code, albeit condensed under its two headings.

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Under both the TDC Code and the Model Code, it remains the responsibility of the individual Member to keep their registration of interests complete, up to date and accurate.

The TDC Code states that Members are required to register details of their Disclosable Pecuniary Interests and their Personal Interests (that a Member is aware of at the time) within 28 days of becoming a Member (or being re-elected or reappointed) or a change in those details, in the Authority's Register of Interests. The Model Code requires DPIs and only those personal interests which fall within the categories set out in Table 2, defined as Other Registerable Interests, to be registered.

Although the Committee at its last meeting suggested receiving a visual comparison of the two Codes on a "side-by-side" basis, due to the way the two Codes have been produced, attempts on this approach were confusing, therefore the Monitoring Officer has endeavoured to explain below (within current position), the differences between the interest provisions within the Codes. Upon review, the main difference to highlight is the impact of Paragraph 9 within the TDC Code being withdrawn from all types of Personal Interests although, a test is still applied to those Non-Registerable Interests within the Model Code which 'affects' the interest.

Current Position

The current TDC Code was adopted in 2018 and has served well to uphold and promote the high standards of conduct in public life for all elected Members, voting co-opted Members and appointed members. Trust and confidence in public office holders and institutions are important for the functioning of local authorities and it is each Members' responsibility to comply with the provisions of the Code.

Should the Model Code be adopted then training will be required for all Members which may be delivered by Officers throughout dedicated sessions. Guidance issued by the LGA on the Model Code is attached at Appendix C.

From further conversations between Monitoring Officers across the County, there is still an appetite to adopt the Model Code subject to approval from Full Council. At the time of writing, the following authorities have either recommended the adoption of the Model Code or have adopted the Model Code; Essex County Council, Southend-on-Sea City Council, Basildon Council, Maldon District Council, Castle Point Borough Council, Chelmsford City Council and Rochford District Council.

When the current TDC Code was adopted in 2018, the majority of Town and Parish Councils adopted the revised Code, to align with its District Council. A number of Town and Parish Councils are adopting or considering adopting the LGA Model Code, and are therefore seeking advice and guidance from this authority on its position.

THE MODEL CODE

"Protecting your reputation and the reputation of the local authority

9. Interests

As a councillor:

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9.1 I register and disclose my interests.

“Section 29 of the Localism Act 2011 requires the Monitoring Officer to establish and maintain a register of interests of members of the authority.

You need to register your interests so that the public, local authority employees and fellow councillors know which of your interests might give rise to a conflict of interest. The register is a public document that can be consulted when (or before) an issue arises. The register also protects you by allowing you to demonstrate openness and a willingness to be held accountable. You are personally responsible for deciding whether or not you should disclose an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise. It is also important that the public know about any interest that might have to be disclosed by you or other councillors when making or taking part in decisions, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained

You should note that failure to register or disclose a Disclosable Pecuniary Interest as set out in Table 1, is a criminal offence under the Localism Act 2011.

A detailed table setting out the explanation of Disclosable Pecuniary Interests as set out in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and is attached at Appendix B.”

Appendix B Registering Interests

Within 28 days of becoming a member or your re-election or re-appointment to office you must register with the Monitoring Officer the interests which fall within the categories set out in Table 1 (Disclosable Pecuniary Interests) which are as described in “The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012”.

“Disclosable Pecuniary Interest” means an interest of yourself, or of your partner if you are aware of your partner’s interest, within the descriptions set out in Table 1 below.

“Partner” means a spouse or civil partner, or a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners.

1. You must ensure that your register of interests is kept up-to-date and within 28 days of becoming aware of any new interest, or of any change to a registered interest, notify the Monitoring Officer.
2. A ‘sensitive interest’ is as an interest which, if disclosed, could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation.
3. Where you have a ‘sensitive interest’ you must notify the Monitoring Officer with the reasons why you believe it is a sensitive interest. If the Monitoring Officer agrees they will withhold the interest from the public register.

Non participation in case of Disclosable Pecuniary Interest

4. Where a matter arises at a meeting which directly relates to one of your Disclosable Pecuniary Interests as set out in Table 1, you must disclose the interest, not participate in

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any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation. If it is a 'sensitive interest', you do not have to disclose the nature of the interest, just that you have an interest. Dispensation may be granted in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

5. Where you have a Disclosable Pecuniary Interest on a matter to be considered or is being considered by you as a Cabinet member in exercise of your executive function, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter apart from arranging for someone else to deal with it.
Insert the beginning part of Appendix B – registering from the Model Code

The TDC Code

Part 2 of The TDC Code focuses on Members' Interests. Paragraph 4 of The TDC Code detailed below refers to Disclosable Pecuniary Interests:

4.1 Disclosable Pecuniary Interests (DPIs) are defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (attached as Appendix C for the purposes of this report). It is important that Members understand what amounts to a DPI, that they identify clearly all DPIs relevant to them and that they take the necessary action required by law. Breach of the requirements related to DPIs is a criminal offence and are referred to the Police.

4.2 A Member will have a Disclosable Pecuniary Interest in any business of their Authority if it is of a description set out in Appendix B (of the TDC Code) and is either:

- a) their own interest,
or that of a Relevant Person being:
- b) an interest of their spouse,
- c) and interest of their civil partner, or
- d) an interest of a person with whom they are living with as a spouse or civil partner,

and in the case of paragraphs 4.2(b)-(d) the Member is aware that the Relevant Person has the interest.

The Effect of Disclosable Pecuniary Interests on participation are set out in paragraph 8 of the TDC Code but not repeated within the body of this Report.

Comparison Summary of the differences between the DPI provisions within each Code:

Whilst the Codes are worded and formatted differently, the requirements are based on the Localism Act 2011 and the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 therefore, the Monitoring Officer considers the Model Code does provide additional guidance and if adopted would not change the requirements of the TDC Code.

PERSONAL INTERESTS DETAILED WITHIN THE TDC CODE ARE DEFINED AS FOLLOWS:

5. Personal Interests

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5.1 A Member will have a Personal Interest in any item of business of the Authority where it relates to or is likely to affect –

- a) any person or body who employs or has appointed them;
- b) any existing contract for goods, services or works, which has not been fully discharged or has expired within the last 2 years, and made between the Authority and
 - (i) the Member,
 - (ii) a Related Person;
 - (iii) a body in which the Member has a Disclosable Pecuniary Interest; or
 - (iv) a person or body of the description specified in paragraphs 5.1 (c)-(d) below;
- c) any body of which the Councillor is a member or in which they hold a position of general control or management and to which they are appointed or nominated by the Authority;
- d) any other body of which the Councillor is a member or in which they hold a position of general control or management –
 - (i) exercising functions of a public nature; or
 - (ii) directed to charitable purposes; or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);
- e) the interests of any person from whom the Member has received a gift or hospitality with an estimated value of at least £50
- f) a decision in relation to that business which might reasonably be regarded as affecting the financial position or wellbeing of:
 - (i) the Member or
 - (ii) a Related Person (if the Member is aware of its existence)

to a greater extent than that of the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, affected by the decision;

5.2 Related Person is defined as:

- a member of the Councillor's family; or
- any person with whom the Councillor has a close business or personal association.

In the case of a Related Person, a Councillor is only required to declare those interests which they are aware or ought reasonably to be aware of the existence.

THE MODEL CODE - APPENDIX B – REGISTERING INTERESTS:

You should also register details of your other personal interests which fall within the categories set out in Table 2 (Other Registerable Interests)

You have a personal interest in any business of your authority where it relates to or is likely

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to affect:

- a) any body of which you are in general control or management and to which you are nominated or appointed by your authority
- b) any body
 - (i) exercising functions of a public nature
 - (ii) any body directed to charitable purposes or
 - (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

Disclosure of Other Registerable Interests

6. Where a matter arises at a meeting which directly relates to one of your Other Registerable Interests (as set out in Table 2), you must disclose the interest. *You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.* If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

Comparison Summary

These Other Registerable Interests within the Model Code are almost identical to TDC's definition of Personal Interests in paragraph 5 (c) and (d) as set out above however, the TDC Code gives further flexibility to speak on an item subject to the assessment of the Public Interest test as set out in Paragraph 9, without seeking a dispensation from the Monitoring Officer. The Model Code prohibits within its paragraph 6, a Member possessing an Other Registerable Interest from speaking at the meeting unless the public are permitted to speak at the meeting and if a dispensation has been granted. The Monitoring Officer foresees that this will have an impact for those Members who are appointed to outside bodies by the Council.

MODEL CODE - Disclosure of 'Non-Registerable Interests'

7. Where a matter arises at a meeting which directly relates to your financial interest or well-being (and is not a Disclosable Pecuniary Interest set out in Table 1) or a financial interest or well-being of a relative or close associate, you must disclose the interest. *You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.* If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

8. Where a matter arises at a meeting which affects –
- a. your own financial interest or well-being;
 - b. a financial interest or well-being of a friend, relative, close associate; or
 - c. a body included in those you need to disclose under Disclosable Pecuniary Interests as set out in Table 1

you must disclose the interest. *In order to determine whether you can remain in the meeting after disclosing your interest the following test should be applied.*

9. Where a matter affects your financial interest or well-being:

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- a. to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and;
- b. a reasonable member of the public knowing all the facts would believe that it would affect your view of the wider public interest

You may speak on the matter only if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless you have been granted a dispensation.

If it is a 'sensitive interest', you do not have to disclose the nature of the interest.

10. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must make sure that any written statement of that decision records the existence and nature of your interest.

Summary Comparison of Model Code Non-Registerable Interests and TDC Personal Interests:

Paragraphs 7-9 of the Model Code are again very similar to Paragraph 5(f) of the TDC Code, but make very slight distinctions between '*directly relating to*' and '*affecting*', and it is important to highlight the impact of Paragraph 9 within the TDC Code compared with the Model Code:

The TDC Code: 9. Effect of Personal Interests on participation

9.1 If a Member has a personal interest (not a Disclosable Pecuniary Interest) in any business of the Authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the Members' judgement of the public interest and they are present at a meeting of the Authority at which such business is to be considered or is being considered the Member must:-

- (a) Declare the existence and nature of the interest in accordance with paragraph 7.1 (but subject to paragraph 12)*
- (b) Withdraw from the room or chamber where the meeting considering the business is being held, immediately after making representations or in any other case when the business is under consideration, unless they have obtained a dispensation from the Authority's Monitoring Officer.*

Therefore, under the Model Code, if adopted, a Member possessing a Non-Registerable Interest as defined in Paragraph 7, which directly relates to their financial interest or well-being or a financial interest or well-being of a relative or close associate, a member can ONLY speak on the matter IF members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless a dispensation has been granted.

If the Member possesses a Non-Registrable Interest which affects the financial interest or well-beng etc. a similar test in TDC Paragraph 9 is applied.

THE MODEL CODE - GIFTS AND HOSPITALITY

As a councillor:

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10.1 I do not accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.

10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.

10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.

In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.

TDC Code – Gifts and Hospitality & Comparison

These are set out in paragraph 5 (e) referred to above, and the value of the gift or hospitality is the same. However, the Model Code does provide further text and guidance which is similar to the TDC Guidance Note, and has been issued separately, therefore bringing both of these together could be considered helpful for Members, rather than looking at two different documents.

RECOMMENDATION(S)

That the Standards Committee:

- (a) notes the contents of this report and its Appendices;**
- (b) confirms its satisfaction of the comparison of the Tendring District Council's Members' Code of Conduct and the LGA Model Code of Conduct or whether there are any further matters for concern; and**
- (c) subject to (b), considers whether to recommend the adoption of the LGA Model Code to Full Council for its approval.**

PART 2 – IMPLICATIONS OF THE DECISION

BACKGROUND INFORMATION, CODE OF CONDUCT and LEGAL CONSIDERATIONS

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In January 2019, the Committee on Standards in Public Life published a report which recommended that the Local Government Association (LGA) in consultation with representative bodies of councillors and officers of all tiers of local government, should produce a new Model Code of Conduct for Councillors.

This Model Councillor Code of Conduct (“the Model Code”) was approved by the LGA on 3 December 2020 and then a final version was approved in May 2021 and made available to all Local Authorities shortly thereafter.

On 18th March 2022 Letter from Minister for Equalities and Levelling Up, Housing and Communities responded to the Report. In respect of the first Recommendation relating to the LGA & Model Code – the government stated is for individual councils to set their own local code, in line with the Act. Recognises the work of the LGA to establish a consistent benchmark that local authorities can amend or add to as they see fit to reflect local circumstances. Remains a local decision on whether this model code is adopted.

Responding to the Department for Levelling Up, Housing and Communities response to the Committee for Standards in Public Life report into Local Government ethical standards recommendations, Cllr James Jamieson , LGA Chairman, said:

“We are pleased that the Government’s response to the Committee for Standards in Public Life report acknowledges the work the LGA has undertaken to address the issues outlined in the report through the development of a Model Councillor Code of Conduct and supportive guidance in consultation with the sector.

We agree that there is still more to do to, but that a locally-led standards and conduct system, supported by guidance, training and good practice is the best approach. In addition, it is positive to see that the Government agrees with the principle of safeguarding elected representatives in relation to the disclosure and publishing of councillors’ home addresses.

We look forward to working with government and councils to determine the best mechanisms to support improvement in areas of continued focus outlined in the response and to ensure the continuation of high standards of conduct and appropriate protections for councillors and councils in the future.”

Should the Model Code be adopted then training will be required for all Members which may be delivered by Officers throughout dedicated sessions. Guidance issued by the LGA on the Model Code is attached at Appendix C.

From further conversations between Monitoring Officers across the County, there is still an appetite to adopt the Model Code subject to approval from Full Council. At the time of writing, the following authorities have either recommended the adoption of the Model Code or have adopted the Model Code; Essex County Council, Southend-on-Sea City Council, Basildon Council, Maldon District Council and Castle Point Borough Council.

LEGAL CONSIDERATIONS

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 within the Code. Both The Code and The Model Code are consistent with The Nolan Principles but any breach of the principles is not by itself a breach of either code. Members of Tendring District Council along with Town and Parish

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Councils shall have regard to the Seven Principles of Public Life as it is these principles which underpin the Rules of Conduct.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder/Equality and Diversity/Health Inequalities/Area or Ward affected/Consultation/Public Engagement.

The Model Code and supporting Guidance emphasises the importance of Councillor responsibility to ensure those with protected characteristics are protected from discrimination

Prior to the Model Code being produced by the LGA, extensive consultation was undertaken nationally, to which the District Council via consideration by the Standards Committee responded to. The first version of the LGA Model Code, was amended following feedback and a third version was produced in response to concerns around the Members' interests section. Prior to the third version being issued, Essex Monitoring Officers were not comfortable recommending the LGA Model Code for adoption, these concerns have now been reduced. However, it is worth noting that the LGA Model Code is not being recommended for adoption until the new municipal year in 2023, and the Standards Committee may wish to undertake more local consultation in this regard.

Risk – There is no particular risk to the Authority in terms of the conduct and standards of Members whether this Committee decided to recommend the adoption of the LGA Model Code or to retain and update the current Code. There is the potential of an element of reputational risk if the LGA Model Code is not adopted; more of a question as to why it was not adopted when many authorities across the county, along with Town and Parish Councils, have adopted or are considering doing so. The streamlining of authorities would not be in place with differing codes being applicable to individual authorities, which could lead to some confusion; however these risks are minimal and would not affect the day to day practice of this authority.

Wards Affected: All

APPENDICES

Appendix A: Tendring District Council Members' Code of Conduct (The Code)

Appendix B: The LGA Model Code of Conduct (The Model Code)

Appendix C: Guidance on Local Government Association Model Councillor Code of Conduct