

	<p>Constitution, Ethics and Probity Committee</p> <p>16 March 2017</p>
Title	Members Code of Conduct
Report of	Monitoring Officer
Wards	None
Status	Public
Enclosures	Appendix A: Existing Members Code of Conduct Appendix B: Revised Members Code of Conduct
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<p>Summary</p>
<p>This report considers the content of the Code of Conduct, transforms the Code into a straightforward format in plain English and recommends changes designed to improve its provisions.</p>

<p>Recommendations</p>
<p>That the Committee consider the revised Members Code of Conduct shown at Appendix B and recommend to full Council that the amended Code be adopted as the Council’s Members Code of Conduct.</p>

1. WHY THIS REPORT IS NEEDED

Introduction

- 1.1 It would appear timely to consider whether any changes to the content of the Code of Conduct itself should be considered, in the light of the experience of the operation of the Code in practice since its introduction in 2012.
- 1.2 In some respect the Code as written is complex and not easy to follow. Accordingly the Code has been re-written in a more straightforward way and in plain English. The changes are intended primarily to clarify the circumstances in which Members need to declare interests.

Background

- 1.3 As set out in previous reports to the Committee, Section 27 of the Localism Act 2011 imposes a duty on the Council to “promote and maintain high standards of conduct by members and co-opted members” of the Council. The Council is also required by Section 28 of the Act to adopt a code dealing with the conduct that is expected of Members and co-opted Members of the Council when they are acting in that capacity, and such a Code must include the provisions the Council considers appropriate in respect of the registration and disclosure of Pecuniary and Non-Pecuniary interests.
- 1.4 For the most part it is a matter for the Council to decide what the contents of its Code should be. However that part of the standards regime introduced by the 2011 Act which relates to pecuniary interests is statutory. The Act, or Regulations made under the Act, define pecuniary interests, require their registration and disclosure, and create criminal offences if the statutory provisions are not complied with. The Code sets out and reflects these statutory provisions.
- 1.5 However, it is for the Council to decide what other provisions to include in the Code. The current Code does so in Section 10, which deals with “Other interests”, which are referred to as non-disclosable pecuniary interests or non-pecuniary interests.
- 1.6 Section 10 of the current Code causes difficulty in practice for two reasons:
 - Firstly, the terminology is extremely confusing. “Non-disclosable pecuniary interests or non-pecuniary interests” must in fact be declared under the Code, which makes the term “non-disclosable” inappropriate. The Code does not provide any different treatment for pecuniary interests compared to non-pecuniary interests, so it is unclear why such terms are used.
 - Secondly, the Code requires only the declaration of these “other interests”, and has no provision requiring a Member to withdraw from decision-making even where the “other interest” is a financial one and would clearly be perceived by a member of the public as one likely to affect the Member’s judgment of the public interest, or one such as to give the appearance of

bias so that a decision may be liable to successful challenge if the Member does participate in decision-making. The Code has no provisions preventing decision-making in any circumstances other than those where a Member has a pecuniary interest as statutorily defined.

- 1.7 Examples of a situation not catered for by the current Code can be provided. Any interest in land or property in Barnet owned by a Member or his/her spouse or partner is a pecuniary interest as defined by the Act. It would therefore be an offence for such a Member to participate in decision-making with respect to (for example) a planning application relating to such a property.
- 1.8 However, the statutory definition of a pecuniary interest would not include land or property owned by someone living next door to the the Member. Unless the Code contains provisions dealing with the matter, therefore, it is open to a Member with such an interest to participate in decision-making in respect of their neighbour's property. Under the current Code, a Member would be required to declare an interest, but would not be required to absent him or herself from the meeting to determine the neighbour's planning application. If this were to actually occur it is likely to affront the public's sense of fairness and justice.

Proposed Amendments

- 1.9 In order to address these issues, it is proposed that the Code should be revised so as to include personal interests defined as interests which would affect the wellbeing or financial interests of a Member in the list of pecuniary interests.
- 1.11 Other changes have been made to ensure consistency of language and style throughout the Code.
- 1.12 The recommended changes are set out in the version of the Code contained at Appendix B.

2. REASONS FOR RECOMMENDATIONS

- 2.1 The Constitution, Ethics and Probity Committee is responsible for promoting and maintaining high standards of member conduct. This report puts forward proposals for amending the Members Code of Conduct to assist in fulfilling that duty.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

- 3.1 The reasons for the proposals are set out in Section 2 above.

4. POST DECISION IMPLEMENTATION

- 4.1 If the Committee agrees the recommendation, it will be reported to Full Council for approval.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 The Council has a statutory duty under the Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the Council.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

5.2.1 None.

5.3 Legal and Constitutional References

5.3.1 As set out in Section 2 above.

5.3.2 Council's Constitution, Responsibilities for Functions, Annex A – the Constitution, Ethics and Probity Committee terms of reference includes responsibility to “proactively to review and keep under review all aspects of the Council's Constitution so as to ensure that it remains current and fit for purpose, and to make recommendations thereon to the Council”.

5.4 Risk Management

5.4.1 The proposals set out in this report are designed to reduce the risk of reputational damage to the Council and to individual members arising from any perception that the Council's arrangements for dealing with complaints about member conduct are not fair or not effective.

5.5 Equalities and Diversity

5.5.1 The decision making processes of the Council, as enshrined within the Constitution, need to be transparent and accessible to all sectors of the community.

5.6 Consultation and Engagement

5.6.1 None.

6. BACKGROUND PAPERS

6.1 None.