

## **Committee: Standards and General Purposes**

**Date: 11 March 2021**

Wards: All

### **Subject: Member Code of Conduct**

Lead officer: Louise Round, Managing Director, South London Legal Partnership

Lead member: Councillor Tobin Byers

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#### **Recommendations:**

- A. To recommend to Full Council that it adopt the revised Code of Conduct for Members attached as Appendix A with effect from 1 June 2021 and that the Monitoring Officer be authorised to make such consequential amendments to other parts of the constitution as she considers necessary;
  - B. To note that the Monitoring Officer will arrange training sessions for councillors on the requirement of the revised Code of Conduct;
  - C. To note that a further report will be brought to a later meeting of this Committee on setting out progress made by the Members' Constitution Review Working Group on other aspects of the Constitution.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. At its meeting in July 2020 the Committee established a member working group to carry out a review of the Council's constitution. Since that time a number of meetings of the working group have taken place and good progress has been made in a number of areas. The group is taking a wholesale approach to the review although it was agreed that its scope did not include considering whether to recommend a change in the governance arrangements from the current leader and executive (cabinet) model. However, given the need to ensure any changes are fully and consistently reflected in the revised version of the constitution, more time is required to produce an amended constitution for consideration by the Committee.
- 1.2. Accordingly, this report is confined to one aspect of the working group's consideration, namely to ask the Committee to consider whether to adopt a new code of conduct for councillors, based on the model code of conduct agreed by the Local Government Association (LGA), as amended following consideration by the working group to take account of local circumstances.

## **2 DETAILS**

- 2.1. Following extensive consultation, the LGA published its long awaited model code of conduct in December last year. They embarked upon the exercise as a result of a recommendation from the Committee on Standards in Public Life. The report from that committee made a number of other

recommendations in relation to ethical standards in local government, including that consideration be given to strengthening the sanctions available to councils in cases where councillors are found to be in breach of a code of conduct. However, this would require primary legislation and there is no indication from the Government that this is likely to be forthcoming.

- 2.2. Merton's current code of conduct (Appendix B) is a very light touch document, comprising primarily of the Nolan Principles and having no specific requirements beyond behaving in a way consistent with those principles and with the Council's policies and procedure. The requirement under sections 30 and 31 of the Localism Act 2011 to declare interests and to refrain from taking part in decisions where the councillor has a disclosable pecuniary interest (DPI) as defined by the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2011, is contained in the addendum to the Code. The addendum does not set out the definition of DPIs or the other non-pecuniary interests which the Council has decided should be registered. Those other interests simply appear on the website on the councillor pages. Similarly, although councillors do register any gifts or hospitality offered to them, and this Committee receives an annual report on this issue, the requirement to do so is not referred to in the Code of Conduct itself.
- 2.3. The working group agreed that such a broad brush approach to a code of conduct is not helpful as there is a risk either that nothing amounts to a breach of the Code or conversely that nearly every minor issue could be interpreted as a breach of the Nolan Principles and therefore a breach of the Code. It is generally accepted that those principles provide context and can be an aid to interpretation, rather than amounting to obligations which are enforceable against individual councillors.
- 2.4. The current Code also contains nothing by way of guidance for councillors to support them to behave in accordance with it. By contrast, the LGA code helpfully sets out explanatory guidance under each obligation.
- 2.5. The working group, which included the Council's two independent persons, considered that although the LGA code was cumbersome in certain respects, broadly speaking it was a useful document and certainly represents an improvement on the current Code. The draft code attached as appendix A is substantially the same as the LGA code with some amendments for clarity's sake.
- 2.6. The Localism Act 2011 requires councils to adopt codes of conduct dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. There has been much debate about how to decide when a councillor is acting as an elected member as opposed to in their private capacity. It is not always easy to draw a clear line, especially when social media is being used, although the Council has already agreed social media guidance for councillors. The LGA code recommends the following wording which was agreed by the working group:

*This Code of Conduct applies to you when:*

- *you are acting in your capacity as a councillor and/or as a representative of your council;*
- *you are claiming to act as a councillor and/or as a representative of your council; or*
- *your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor*

2.7. Most of the provisions of the new Code are self-explanatory but the proposed requirements in relation to the declaration of interests at meetings are a bit more complex and can be summarised as follows:

2.7.1 As well as DPis, the proposed new Code defines “other registrable interests” as follows:

“You also have a registrable interest in any business of your authority where it relates to or is likely to affect:

a) any body to which you are nominated or appointed by your authority; or  
b) any body of which you are in a position of general control or management and which:

- i) exercises functions of a public nature;
- ii) is directed to charitable purposes; or
- iii) has one of its principal purposes the influence of public opinion of policy (including any political party or trade union)”

2.7.2 Although not incorporated in the current code, the Council’s website indicates that the following interests are required to be registered and declared so the proposals above are slightly wider than the current position:

“trade union membership;

any position of management or control that the councillor holds in any third party organisation within the borough”

### **Interests at Meetings**

2.7.3 If a matter being discussed at a meeting directly relates to a councillor’s DPI, this must be declared and the councillor must leave the room while the

matter is being discussed. \* Failure to do so is a criminal offence.

\*Note: the interests of a councillor's spouse or civil partner or person living with the councillor as their spouse or civil partner are treated as though they are the interests of the councillor him or herself.

- 2.7.4 If the matter *directly relates* to one of the councillor's other registrable interests as defined in the Code or otherwise directly relates to their financial interests or well-being, they must declare it but can only speak on the matter if members of the public are also allowed to speak on the matter. This is to ensure that a councillor is not in a worse position than an ordinary member of the public. The councillor cannot vote on the matter but does not need to leave the room while the matter is under consideration.
- 2.7.5 If the matter simply *affects* the councillor's other registrable interests, or financial interest or well-being, as opposed to being specifically about one of those things, or it directly relates to or affects a friend, relative or close associate, the ability of the councillor to take part in the discussion of the matter will depend on whether they (or their friend, relative or close associate) are affected more than other residents in the ward or borough, where it is a borough wide issue. If not, then the councillor can participate in the usual way. If they are, then the test of whether the councillor can take part depends on what used to be known as the "prejudicial interest" test. In other words, the councillor must consider whether "a reasonable member of the public knowing all the facts would believe that interest would affect [their] view of the wider public interest". If not, the councillor may speak and vote in the usual way. If so, they may speak if members of the public may also speak but cannot vote. This may appear quite complex but it attempts to distinguish between those cases where the impact on a member or those close to them is direct and obvious and those where the connection is more remote.
- 2.7.6 As is currently the case, if interests are sensitive, a councillor only needs to declare the existence of the interest and not the detail behind it. The Monitoring Officer has authority to grant dispensations in some circumstances to allow councillors to vote where this otherwise would not be possible. The most obvious example would be where so many members were disqualified from voting that it would not be possible to convene a quorate meeting of the relevant decision making body.
- 2.8. If Council agrees to adopt the new code of conduct, it will clearly be important to ensure that all councillors are familiar with its requirements. The Monitoring Officer will arrange training for councillors on the new provisions which will include a reminder of the process for dealing with complaints when they are made against councillors

### **Relationship with Other Protocols**

2.9. The current Code of Conduct is contained in Part 5a of the constitution together with its addendum which partly deals with the requirement to declare interests. Although the existing Code of Conduct is relatively light on detail, over the past few years the Council has adopted number of protocols designed to supplement its provisions. These are:

2.9.1 Part 5b - The Code of Conduct for Employees

2.9.2 Part 5c - The Member/Officer Protocol

2.9.3 Part 5d - The Monitoring Officer Protocol

2.9.4 Part 5e - The Protocol on the Use of Council Resources and Facilities

2.9.5 Part 5f - The Planning Protocol

2.10. Parts 5b and 5d relate to solely to officers and are not affected by these proposals. It is intended that if Council agrees to adopt it, the proposed new code takes the place of Part 5a and its addendum and that Parts 5c, 5d and 5e remain in place as they provide additional guidance for members. They would not require substantive changes if the proposed Code is adopted although it may be necessary to make some consequential changes to ensure consistency of language.

### **3 CONSULTATION UNDERTAKEN OR PROPOSED**

3.1. As stated above, the LGA model code has been subject to consultation at national level and the version being proposed for adoption has been agreed by a cross party working group of Merton councillors

### **4 TIMETABLE**

4.1. If the Committee agrees to recommend the adoption of the proposed new code, it will be considered at the meeting of Full Council on 21 April and it is suggested that it come into effect on 1 June 2021 to allow time for all councillors to receive training on its implications.

### **5 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

5.1. None

### **6 LEGAL AND STATUTORY IMPLICATIONS**

6.1. The legal implications are contained in the body of the report.

### **7 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

7.1. The proposed new code contains express provisions requiring members to treat people fairly and with respect and to refrain from bullying and discrimination. These specific requirements, if adopted, would be new and would be line with the Council's overall approach to qualities.

### **8 CRIME AND DISORDER IMPLICATIONS**

8.1. None

**9 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

9.1. None

**10 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- Appendix A – proposed new code of conduct
- Appendix B – Merton’s current code of conduct

**11 BACKGROUND PAPERS**

11.1.