

STANDARDS COMMITTEE

Report Title	Compliance with the Member Code of Conduct		
Key Decision			Item No.
Ward			
Contributors	Kath Nicholson, Monitoring Officer		
Class	Part 1	Date: 17 OCTOBER 2017	

1. Summary

This report deals with the extent to which Members address the need to comply with the Lewisham Member Code of Conduct.

2. Purpose

The purpose of this report is to give information about the extent of compliance with the Lewisham Member Code of Conduct and to seek from the Committee any views about how practice in Lewisham could be improved.

3. Recommendations

- 3.1 To consider the information set out in this report and to consider whether to make any recommendations to the Council in respect of the effectiveness of the Member Code of Conduct.
- 3.2 To recommend that Council agree an amendment to the Member Code of Conduct to reflect the resolution of Standards Sub Committee A relating to subsidiary companies and to ask the Monitoring Officer to bring a report forward to Council to that effect at the earliest opportunity.

4. Background

- 4.1 The Council adopted a Code of Conduct in 2012 to comply with the requirements of the Localism Act 2011. The adoption of the Code was not only to ensure compliance with the new law but to maintain the Council's long held commitment to the highest standards of behaviour in local government and to promote public confidence in local governance.

.4.2 The Lewisham Member Code of Conduct has appended to it a number of protocols:

- Member and Officer relations
- Member Use of IT
- Planning and Lobbying
- Code on Publicity

These protocols do not form part of the Code, but may be of assistance in deciding whether there has been a breach of the Code's main provisions.

5. Assessment of Current Practice

Officers have looked at elements of practice by Lewisham members to establish whether it fits the requirements of the Code.

5.1 A statutory requirement to undertake to comply with the Member Code of Conduct

- (i) On election in May 2014 all members of the Council, (including those who are co-opted members) have signed a declaration that they undertake to comply with the Member Code of Conduct. These declarations are held by the Monitoring Officer, and are in an appropriate format and are held with the Member's Declaration of Acceptance of Office. Members elected at by-elections have also undertaken to comply with the Code.

5.2 Declarations of Interest

- i) The model Code of Conduct sets minimum standards. The Council has adopted a local Code which requires members to declare the following interests:
- a) disclosable pecuniary interests
 - b) other registerable interests
 - c) any other interest where that member is of the view that a reasonable member of the public in possession of all the facts would think the member's judgement is so significant that it would be likely to impair the member's judgement of the public interest.

Members must also take no part in consideration of the matter and withdraw from the room before it is considered if the interest is a disclosable pecuniary interest or where it is a registerable interest or other significant interest where that member is of the view that a reasonable member of the public in possession of all the facts would think the member's judgement is so significant

that it would be likely to impair the member's judgement of the public interest.

- ii) An assessment has been conducted of the number of declarations that have been made since 1st October 2016. The focus has been meetings of the Mayor and Cabinet (including Mayor and Cabinet (Contracts)) and the Planning Committees. The emphasis has been placed on these meetings as they are the major decision making fora. All declarations of interest are minuted by the committee clerk in attendance and a review of the minutes shows the following results:

October 2016 – September 2017		
	Declaration (personal interest)	Withdrew (disclosable pecuniary/ registerable/ other significant interest)
Mayor & Cabinet	6	5
M&C (Contracts)	5	3
Planning Committees	8	3
Council	55	1

- iii) It is apparent that there is a clear awareness that members must consider whether to declare and withdraw.

As previously considered and agreed by this Committee a notice appears at the front of each agenda which details the circumstances in which a personal interest can arise for members to consider on each occasion.

5.3 Advice on Ethical Issues

- i) Some of the declarations/withdrawals referred to in paragraph 5.2 above followed a request for advice from the Monitoring Officer, or her representative. However, several were made without even an approach, as the member concerned was of the view that an interest existed without the need for such advice.
- ii) Where possible, if Code of Conduct issues arise, Monitoring Officer advice is incorporated into reports.

- iii) The number of declarations demonstrates that members are aware of Code of Conduct issues.

5.4 Dispensation

The Standards Committee may in some circumstances grant a dispensation allowing a member to participate in consideration of a matter notwithstanding a disqualifying interest. There have been no applications for dispensation.

5.5 The Members' Register of Interests

Section 30 of the Localism Act 2011 requires members or co-opted members to notify the monitoring officer of any disclosable pecuniary interest of them or a spouse or civil partner they live with. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 specify what is a pecuniary interest. The need to register any of the following interests in the Members' Register of Interests is also a key feature of the Member Code of Conduct.

(a) Employment, office, trade, profession or vocation

Any employment, office, trade, profession or vocation carried on by a relevant person* for profit or gain.

(b) Sponsorship

Any payment or provision of any other financial benefit (other than from the Council) made or provided within the 12 months prior to the date of giving notice of interest for inclusion in the register in respect of any expenses incurred by the Member in carrying out duties as a member, or towards the election expenses of the Member.

This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.

(c) Contracts

Any contract which is made between a relevant person* (or a firm in which they are a partner, or a body corporate in which they are a director or in the securities** of which body corporate they have a beneficial interest) and the relevant authority—

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

- (d) Land**
Any beneficial interest in land which is within the borough.
- (e) Licences**
Any licence (alone or jointly with others) to occupy land in the borough for a month or longer.
- (f) Corporate tenancies**
Any tenancy where (to the Member's knowledge)—
- (a) the landlord is the Council; and
 - (b) the tenant is a body in which the relevant person* is a firm in which they are a partner, or a body corporate in which they are a director or in the securities** of which body corporate they have a beneficial interest.
- (g) Securities**
Any beneficial interest in securities of a body where—
- (a) that body (to the Member's knowledge) has a place of business or land in the borough; 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.

A "relevant person" is:-

- (i) the Member, their spouse, or civil partner;
- (ii) a person with whom the member is living as husband and wife; or
- (iii) a person with whom the member is living as if they were civil partners.

"Securities" means shares, debentures, debenture stock, loan stock, 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

There are entries for all members in the Register of Members' Interests and an annual reminder is also sent to all members about the need to keep this up to date. All members have submitted a completed Declaration of Interest which now includes a section requesting information in relation to gifts and hospitality.

Individual returns are now available on the Council website.
www.lewisham.gov.uk

5.6 Hospitality & Gifts

Under the Member Code of Conduct members are required to provide details of any gift or hospitality over the value of £25 and the source of such gift or hospitality that they receive as a member. The Code requires that within 28 days of receiving any gift or hospitality over the value of £25 that they notify the Monitoring Officer of the existence and nature of the gift or hospitality.

For the purpose of this review relevant entries for the previous year in the relevant section of the Register of Interests have been perused in an attempt to establish recent and current compliance with the requirements of the Code of Conduct. The Register has been completed by all whether by indicating hospitality received or by completing the section with "None". This tends to indicate that members have a clear recognition of their need to make relevant entries.

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6. **Complaints of breach of the Member Code of Conduct**

- 6.1 Complaints of breach must be made to the Monitoring Officer, and there is a dedicated email address for this to be done. This is widely publicised on the Council's website where there is a direct link alongside the Complaints Procedure. The address is monitoring.officer@lewisham.gov.uk.
- 6.2 Perhaps the most telling indicator of the extent of compliance with the Member Code of Conduct is the number of complaints of breach made to the Council. Under changes introduced by the Localism Act 2011 the procedure for investigation of allegations of complaints of breach of the Code of Conduct is a matter for local discretion. The Council adopted a standard procedure for handling complaints which is designed to be a relatively straightforward and non-bureaucratic way of dealing with such issues.
- 6.3 Since the consideration of the last report about compliance with the Member Code of Conduct in November 2016 there have been the following complaints raised against members.

6.4 A

In January 2017, a complaint was made that A had failed to enter all necessary entries in the Members' Register of Interests. The complainant declined to make his identity known to A. A search at Companies House revealed that A was a director of two companies associated with the Local Government Association in which A is active. Membership of the LGA had been declared by A in the Register but not its subsidiary companies. The Monitoring Officer pointed out the omission to A, who rectified the position without delay. Following investigation by the Monitoring Officer, and consideration by the Independent Person, in July 2017 the matter was referred to Standards Sub Committee A for consideration. The Sub Committee agreed that there had been a technical breach of the Council's Member Code of Conduct. However the Sub Committee also noted that the breach had been promptly rectified, that A had not participated in any decisions about the companies concerned and had apologised for his oversight. In view of the minor technical nature of the breach, the Sub Committee unanimously agreed that no sanction should be imposed. The Sub Committee resolved that on the next review of the Member Code of Conduct, a specific reference to the need to register interests in subsidiary as well as parent companies should be included in the Code.

B

A referral was made to the Monitoring Officer by Councillor X that Councillor Y had inappropriately retweeted a tweet from a member of the public in breach of the Member Code of Conduct. Because of a possible perceived conflict of interest, the Monitoring Officer asked her deputy to handle the complaint. The deputy has been trying to establish whether informal resolution is possible, and those attempts have not yet reached their conclusion. If informal resolution is not achieved, the Deputy Monitoring Officer will conduct an initial assessment to ascertain whether the complaint should proceed to detailed investigation.

C

A complaint was received that C had not responded to concerns of the complainant in relation to disruption caused by the building works in Lewisham Town Centre, and had been disrespectful to her and had behaved inappropriately towards her at the Labour Party Conference in Liverpool in September 2016. The Monitoring Officer took the view that only those complaints relating to C's allegedly inappropriate behaviour could potentially be a breach of the Member Code. She met with the complainant to discuss her complaint, in the presence of her representative. The Monitoring Officer sought to establish whether informal resolution was possible, and though C agreed to this, the complainant did not. An initial assessment was then conducted by the

Monitoring Officer to establish whether the matter should be investigated in detail, and she reached the conclusion that it should not. Her rationale was that the Code only applies when a member acts, or purports to act, in their role as councillor. However, the allegation, even if substantiated, occurred in the evening in the bar area at a Labour Party Conference when C was acting on party and not Council business. C made it clear that he did not wish to be engaged on Council business at the time. The Monitoring Officer informed the complainant of this decision. She remained dissatisfied, wrote to the Monitoring Officer on two occasions further and the Monitoring Officer has replied substantively.

D

In July 2017, an undated letter to the Council's Audit Team was referred to the Monitoring Officer. In it the complainant suggests that D is in breach of the Member Code of Conduct by her actions in supporting her son in relation to an Employment Tribunal claim, and because her son allegedly is holding onto assets of the complainant's organisation by whom he was employed. From the documents supplied with the letter to the Council's Audit Team, it appeared to the Monitoring Officer that, even if substantiated, the complaint would not fall within the remit of the Code of Conduct applying to members, as even from the allegations, D appeared not to be acting, or holding herself out as acting, as a local councillor. It was pointed out to the complainant that if he thought that this interpretation was incorrect, he could let the Monitoring Officer know why, setting out details of his complaint. No response was received.

E

A member of the public complained that he had been wrongly excluded from membership of the Evelyn Assembly Co-ordinating Group as a result of an arbitrary discriminatory procedure by a ward member, E.

The Executive Director for Customer Services investigated the complaint on behalf of the Monitoring Officer. Whilst he acknowledged that there were difficult circumstances in the Assembly, arising in part from the sad loss of one ward member and a change in administrative arrangements, he found no evidence of discriminatory behaviour by E. He recommended that a review of Guidance for Assemblies be undertaken to take account of the issues identified in his investigation.

7. Whistleblowing Complaints

If there were complaints of alleged breaches of the Code of Conduct by members, it may be that they would arise through the Council's whistleblowing policy, which is well embedded. This Committee has received annual reports on whistleblowing cases for many years.

One complaint about the behaviour of members at a Planning Committee also suggested that a member ought to have declared an interest and not participated in discussion about an application relating to a Catholic school because they are a practising Catholic. The Monitoring Officer wrote to the complainant informing them that the duties of members in relation to declaration of interests is a matter for them, and that a more specific interest than was alleged would be needed to prevent participation.

9. Legal Implications

9.1 The ethical framework under which the measures set out in this report have been established are provided in the Localism Act 2011 and Regulations made under it.

9.2 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

9.3 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

9.4 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed at 12.2 above.

9.5 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

9.6 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance

entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

9.7 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

9.8 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

10. Financial Implications

There are no specific implications arising.

11. Crime and Disorder Implications

The Code of Conduct deals with the promotion of the highest standards of behaviour, and the prevention of breaches of the Member Code of Conduct which may well amount to criminal behaviour.

13. Human Rights Act Implications

There are no specific implications arising.

14. Equal Opportunities Implications

There are no specific implications arising.

15. Environmental Implications

There are no specific implications arising.

16. Conclusion

The Member Code of Conduct appears to be well embedded in Lewisham. Evidence seems to suggest a high level of compliance. Members of the Standards Committee are asked for their views on this data, and to make any further comments they consider appropriate to improve practice.

For further information about this report please contact Kath Nicholson, Head of Law on 020 8314 7648.