

STANDARDS COMMITTEE

Report Title	Compliance with the Member Code of Conduct		
Key Decision	n/a		Item No. 5
Ward	n/a		
Contributors	Kath Nicholson, Monitoring Officer		
Class	Part 1		Date: 22 November 2018

1. Summary

This report deals with the way in which Members address the need to comply with the Lewisham Member Code of Conduct and seeks the Committee's views about whether any amendment to practice is required or further information brought to the Committee's attention.

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.

4. Background

- 4.1 On June 28th 2012 the Council adopted a new Code of Conduct to comply with the requirements of the Localism Act 2011 in relation to the Council's ethical framework. The adoption of the Code was to not only 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 practice 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 2018 all councillors signed two declarations. The first is their declaration of acceptance of office. The second is an undertaking to abide by the Council's Member Code of Conduct in place from time to time. These declarations are held by Head of Committee Business on behalf of the Monitoring Officer.

5.2 Declarations of Interest

- i) The Government's model Code of Conduct sets minimum standards. The Council has adopted a local Code, which incorporates all the required statutory elements and 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 their 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 October 2017. 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 2017 – October 2018		
	Declaration (personal interest)	Withdrew (disclosable pecuniary/ registerable/ other significant interest)
Mayor & Cabinet	5	2
M&C (Contracts)	0	0
Planning Committees	13	0
Council	24	0

iii) It is apparent that there is a clear awareness that members must consider whether to declare and withdraw, as the incidence of such practice shows.

As previously considered and agreed by this Committee a notice now appears at the front of each agenda which details the circumstances in which a personal interest can arise. Members have commented that they find this notice to be a helpful reminder and concise summary of their responsibilities on declaring interests.

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

It is possible for a member to apply to the Standards Committee for dispensation allowing them to participate 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 and 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 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 Following an incident in November 2018 when councillors were subjected to violent and intimidating behaviour the Monitoring Officer has advised that where she and the member are satisfied that disclosure of a member's address may lead to violence or intimidation of the member or those associated with them details of their home address need not be disclosed publicly. Several members have sought to take advantage of this provision and their home address has been removed from the publicly available Register of Interests

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 and it was highlighted in the training by the Head of Law.

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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 revised Procedure for Handling Complaints at its meeting on the 28th June 2012, which is a much simpler procedure than that previously in place and allows for informal resolution where appropriate

6.3 Since the consideration of the last report on the compliance with the Member Code of Conduct in October last year there has been two complaints raised against members.

6.4 A

This is a complaint made in February 2018 by Councillor A against Councillor B. It relates to an email from a private account from Councillor B to Councillor A which contained a profanity. Councillor B apologised, also by email, within minutes.

It is noteworthy that Councillor B had previously complained about an alleged breach by Councillor A in relation to a re-tweet by Councillor A which contained statements about fellow councillors which Councillor B deemed to be inappropriate. This complaint was reported in summary as still under investigation in the last review of compliance with the Member Code of Conduct.

Because of a conflict of interest for the Monitoring Officer, she allocated the earlier complaint to the former Deputy Monitoring Officer. The former Deputy Monitoring Officer made initial efforts to resolve the initial complaint by Councillor B informally in accordance with the Council's procedure. These efforts were protracted with no agreement reached through this avenue. Unfortunately, the former Deputy Monitoring Officer retired and the matter was subsequently reallocated to the newly appointed Deputy Monitoring Officer.

In the sensitive period (Purdah) in the run up to a local election it was inappropriate to pursue outstanding complaints. Once the new administration was in place steps were taken to bring both complaints to a conclusion in an amicable manner.

One Councillor agreed not to pursue his complaint further and has offered an apology. The other has not agreed to this course of action. In May 2018, the Deputy Monitoring Officer wrote to both councillors asking whether they would be prepared to reach an amicable conclusion. There has been no response from Councillor A since mid May 2018.

The Deputy Monitoring Officer has written to both Councillors A and B stating that she is of the view that given the lack of communication since May, informal resolution is not feasible. In accordance with the procedure she then conducted an initial assessment about whether the complaints should be further investigated. Given the lapse of time she

has reached the view that they should not and she has indicated that the complaints are now closed.

B

On 11th April 2018 a member of the public complained that Councillor C was unresponsive to their requests and also about dissatisfaction with service levels. The Monitoring Officer responded the same day to the complainant that complaints about service are for corporate complaints and that their complaint about the councillor would not constitute a breach of the Code of Conduct even if substantiated.

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.

8. Legal Implications

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. Financial Implications

There are no specific implications arising.

10. 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.

11. Human Rights Act Implications

There are no specific implications arising.

12. Equal Opportunities Implications

There are no specific implications arising.

13. Environmental Implications

There are no specific implications arising.

14. 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.