

STANDARDS COMMITTEE

Report Title	Compliance with the Member Code of Conduct		
Key Decision			Item No. 5
Ward			
Contributors	Kath Nicholson, Monitoring Officer		
Class	Part 1	Date: 8 January 2020	

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 2018 – October 2019		
	Declaration (personal interest only)	Withdrew (disclosable pecuniary/ registerable/ other significant interest)
Mayor & Cabinet	8	5
Planning Committees	14	4
Council	14	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 November last year there has been 9 complaints raised against members.

6.4 A

On the 17th October 2018 an anonymous complaint was made originally to Corporate Complaints and subsequently referred to the Monitoring Officer alleging that a councillor did not live in the borough and at the time of standing for election they neither lived nor worked in the borough. It was alleged that the member had therefore been improperly elected. The complaint also raised queries in relation to the current entries in the Register of Members' Interests for the councillor which did not accurately reflect their current employment.

On investigation by the Monitoring Officer it was established that the member was properly elected and would not now be disqualified as a councillor if they have moved out of the borough.

In relation to the entries in the Register of Members' Interest it was established that the councillor had requested officers to update his entry in the Register prior to this complaint being raised. There was however some delay in the Register being amended but this omission had been rectified.

The Monitoring Officer also confirmed during the course of her investigations that the councillor had not been involved in any decision making in which their new employment would represent a disqualifying interest.

B

On the 14th November 2018, the Monitoring Officer received a complaint relating to statements made by a councillor at a Labour Party meeting and also in relation to communications by the councillor which the complainant alleged contained "foul, violent and abusive language recklessly with no regard for the audience" in relation to a discussion about transgender issues.

The Monitoring Officer on acknowledging the complaint wrote to both parties enquiring in the first instance as to the possibility of informal resolution as provided for in the Council's procedures.

The complainant confirmed his agreement to proceed to an informal resolution. The councillor confirmed their willingness to meet with the complainant in person but simply to reiterate what had been said previously in an email exchange with the complainant. The Councillor

confirmed that the content of the same would not be changing and further that they would not be apologising for what had been tweeted.

As both parties did not agree to informal resolution the Monitoring Officer proceeded to the next stage of the procedure for handling complaints of breach of the Member Code of Conduct and carried out an initial assessment as to whether the complaint should be further investigated.

On initial assessment the Monitoring Officer concluded that the matters complained about did not warrant further investigation as she concluded that the matters complained about did not take place when the councillor was acting on official Council business or holding them self out as doing so.

The matter is concluded.

C

In February 2019 the Monitoring Officer received a complaint relating to tweets by a councillor which the complainant considered were in breach of the councillor's duty to behave in accordance with the Nolan Principles.

The Monitoring Officer acknowledged receipt of the complaint and enquired whether the complainant wanted their identity to be confidential and also whether they would be prepared to try to seek an informal resolution.

The complainant responded confirming that they did not want to seek informal resolution and gave the impression that that they did not want their details given to the councillor.

The Monitoring Officer then proceeded to initial assessment to inform whether a formal investigation was required. On initial assessment it was concluded that the offending post on social media was published in a private capacity and in the circumstances and in accordance with relevant case law there was no remit for the matter to be investigated under the procedures for handling complaints of breach of the Member Code of Conduct.

The matter is concluded.

D

On the 21st May 2019 a complaint was received raising concerns about a councillor's participation in the activities and decision making of a

local community group. The complaint made reference to amongst other allegations the councillor convening and insisting on chairing a Special General Meeting of the group while having no remit or constitutional role; using extraordinary and unconstitutional behaviour to interfere in the group's business while conferring an advantage on other individuals.

In considering the complaint and conducting an initial assessment the Monitoring Officer concluded that the actions complained about, whether justified or not, occurred in the context of the business of the local group during which time the councillor was not acting or purporting to act in their capacity as a councillor.

In the circumstances the Monitoring Officer was satisfied that the Member Code of Conduct did not apply in relation to the actions complained about and concluded that there was no further action required in relation to the complaint which was not upheld.

E

On the 12th June 2019, the Monitoring Officer received a complaint brought by a Union official on behalf of one of their members alleging that at a Constituency Labour Party meeting a councillor had lunged at the Union member in an aggressive and violent manner and had to be restrained by colleagues. The Union member is also an employee and was fearful of coming into further contact with the councillor whilst on Council premises.

To enable the Monitoring Officer to assess whether the complaint should be formally investigated as a breach of the Council's Member Code of Conduct she wrote to the Union official requesting that an Ethics Complaints Form be completed.

On receipt of the Ethics Complaint Form a further complaint was raised namely that the councillor was in breach of the Localism Act 2011 in failing to register an interest and failing to declare that interest in a full Council meeting.

In relation to the initial complaint the Monitoring Officer concluded that the behaviour complained about did not occur when the councillor was acting or holding them self out as being a councillor. Consequently there was no remit for the matter to be investigated under the procedures for handling complaints of breach of the Member Code of Conduct.

On the second issue complained about the Monitoring Officer was satisfied that the allegation that the councillor failed to declare an interest or to make an appropriate entry in the Register of Members' Interests met the criteria for further investigation.

On further investigation the Monitoring Officer established that although the councillor had spoken to an item at full Council in February 2019, at that time the councillor had no interest to declare. The councillor only became a member of the organisation which may have given rise to an interest after the Council meeting in question.

On assuming membership of the organisation in question the councillor had written to officers in a timely manner requesting that their entry in the Register of Members' Interests be amended accordingly.

The Monitoring Officer wrote to the Executive Director for Children and Young People to ensure that appropriate measures were put in place to minimise contact between the member of staff and the councillor.

The matter is concluded.

E

On the 5th July 2019, a complaint was referred to the Monitoring Officer raising allegations that the Council was promoting the personal undeclared business interests of a councillor. The complaint related to social media posts promoting a business that the councillor owned. The complaint also had a second limb relating to the councillor's entry in the Members' Register of Interests. The complainant specifically requested that their identity remain confidential.

On initial assessment on the first limb of the complaint, the Monitoring Officer concluded that as the councillor was not the publisher or in any way responsible for the social media posts, there was no further action to take. In the circumstances the Monitoring Officer was satisfied that the Member Code of Conduct did not apply in relation to the actions complained about on the first limb of the complaint.

On the second issue namely that the councillor's entry in the Register of Members' Interests did not accurately reflect their business interests, The Monitoring Officer was satisfied that it met the criteria for further investigation.

On further investigation the Monitoring Officer established that the relevant entries in the Register of Members' Interests were current and accurate and that there was no requirement for previous business interests which no longer existed to be entered. The Monitoring Officer concluded that there was no breach of the Member Code of Conduct in this instance. The complainant was notified of this decision.

G

In August 2019, the Executive Director for Housing, Regeneration and Environment referred a matter he had received from the Chief Executive Officer, Lewisham Homes to the Monitoring Officer for possible investigation.

The referral related to allegations that in conversations a Lewisham Homes officer had with a councillor it was asserted by the councillor that they had previously been in receipt of housing benefit in circumstances where they were not entitled to receipt of the same. It was alleged that the councillor also requested that the benefit be reinstated.

The matter was referred to AFACT to look into the recorded data in the first instance to ascertain whether there had been any overpayment to the councillor in the past.

On investigation by the AFACT Team no irregularities were identified in the assessment and payments to the councillor. There was no evidence found to support any allegation of impropriety by the councillor or any member of staff. It was further established that the Lewisham Homes staff could not have processed any overpayments as assessments are carried out by Council staff. That element of the complaint is now closed.

However the investigation is ongoing into the issue of whether the councillor sought to induce a Lewisham Homes employee wrongfully to grant benefits to which they believed they were not entitled.

H

On 27th September, the Monitoring Officer received a complaint in relation to the behaviour of a councillor at a meeting at Manor House library on the 27th July 2019. The matter had initially been raised with the Mayor and had subsequently been considered by the Labour Group Disciplinary Panel.

The complainant remained dissatisfied with the conclusions of the Labour Group Disciplinary Panel and sought to have the matter reconsidered as a referral under the Member Code of Conduct.

The complaint raised issues of alleged aggressive and intimidatory behaviour by the councillor who also accused the complainant of being “anti-Semitic” at a meeting organised by the local Member of Parliament.

On preliminary enquiry by the Monitoring Officer it was established that the meeting was convened by the local MP and did not entail Council business.

In the circumstances the Monitoring Officer was satisfied that the Member Code of Conduct did not apply in relation to the actions complained about and concluded that there was no further action required in relation to the complaint which was not upheld.

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In early October 2019, a complaint was received alleging that a councillor was responsible for a data breach by deliberately forwarding Parliamentary casework from a Lewisham resident to others. The complainant had received such information inadvertently and sought to have this matter considered as a breach of the Member Code of Conduct.

By way of preliminary enquiry into this matter the Monitoring Officer met with the relevant councillor who confirmed that the information had been sent in error. The councillor stated their intention was to inform residents about progress on a proposal on which those residents had previously expressed concern.

On realising the error the councillor had apologised to all affected individuals and personally referred the matter to the Information Commissioners Office.

As informal resolution was not possible the Monitoring Officer proceeded to apply the Initial Assessments criteria. She concluded that it would not be in the public interest for any further investigations to be carried out as the matter had already been referred to the Information Commissioners Office and further that any investigation under the Council's procedures would not unearth anything more than had already emerged from her preliminary enquiries.

The Monitoring Officer at her meeting with the councillor had taken the opportunity to remind the councillor of their responsibilities under the General Data Protection Regulations and made arrangements for the councillor to have a further briefing from the Council's Principal Lawyer who leads on data protection issues.

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 and an annual review report appears elsewhere on the agenda.

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. There appears to be an apparent willingness by the public to use the Member Code of Conduct to raise criticism of councillors generally.

Several of the complaints raised have related to the behaviour of councillors when they cannot be said to be acting on, or claiming to act on Council business. Where that is the case the Member Code of Conduct does not apply and there can therefore be no breach of it. This is an issue which the Committee for Standards in Public Life have recognised as a shortcoming. Elsewhere on the agenda for this meeting the Monitoring Officer will present a comparison between London Borough of Lewisham's practice and the best practice

promoted by the Committee for Standards in Public Life and its proposals for changes to the law.

Some of the complaints relate to the use of social media by councillors in their personal capacity. This too is an issue addressed by the Committee for Standards in Public Life and members' attention is drawn to its proposals as set out in the Monitoring Officer's presentation elsewhere on the agenda.

In reviewing the Code, members may want to consider whether as is contained in the Employee Code of Conduct it would be appropriate for there to be a requirement not at any time to bring the Council into disrepute, as has previously been incorporated into London Borough of Lewisham's Member Code of Conduct.

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