

ETHICAL GOVERNANCE AND PERSONNEL COMMITTEE –
[MEETING DATE]

A COUNTY WIDE CODE OF CONDUCT
REPORT OF THE MONITORING OFFICER

WARDS AFFECTED: ALL WARDS



Hinckley & Bosworth
Borough Council

A Borough to be proud of

1. **PURPOSE OF REPORT**

The purpose of this report is to present to Members a revised Members' Code of Conduct for consideration due to a County Wide proposal to have a single code of conduct.

2. **RECOMMENDATION**

For the Committee to comment on the Code of Conduct and make recommendations as to whether Hinckley and Bosworth Borough Council should adopt a revised Code of Conduct.

3. **BACKGROUND TO THE REPORT**

1. The Localism Act 2011 ('the Act') places the Authority under a duty to promote and maintain high standards of conduct by members and co-opted members of the Authority. In discharging this duty, the Authority is required to adopt a Code dealing with the conduct that is expected of members and co-opted members, when acting in that capacity.
2. The Act abolished the previous national model Code of Conduct which had been adopted by authorities at all levels and instead imposed a simple requirement that each authority put in place a Code which when viewed as a whole, is consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership, and which includes provisions in respect of the registration and disclosure of pecuniary interests and interests other than pecuniary interests.
3. As Leicestershire is a two tier authority area, many Members of the Borough Council serve on the County Council as well as the Borough. There is therefore concern about the potential difficulties which might arise if each authority across Leicestershire adopted Codes which applied different obligations and levels of responsibility. Members at Leicestershire County Council have expressed a desire to achieve a single Code for members across Leicestershire.
4. In the time available it was not possible to consider adopting a common Code of Conduct for Members across the whole of Leicestershire before the new Regulations relating to standards matters came into force on 1 July 2012. Therefore, the Borough Council at its meeting on 19 July 2012 approved the adoption of a new Code of Conduct which met the requirements of the new legislation. The Ethical Governance and Personnel Committee indicated that they wished the Monitoring Officer to continue discussion regarding a Common Code of Conduct.

Discussions with other district, County and Leicestershire Fire and Rescue Service (LFRS) Monitoring Officers

5. Initial discussions with Monitoring Officers across the County through the Local Association of Council Secretaries and Solicitors (ACSeS) group, suggested there was, overall, agreement that the implementation of a common Leicestershire Code of Conduct would be beneficial for Members at County and District level. All the authorities had held discussions with their respective elected members to seek their views on what should and should not be included in the new Codes adopted in July 2012 following the implementation of the Act. Four meetings of the group took place between June and November 2012 including representatives from Leicester City and Rutland County Council. The discussions which have taken place have been open with officers being able to explain what might or might not be acceptable at their respective authorities and appropriately rigorous with a view to achieving a Code capable of addressing the difficult issues which are faced by Members in applying the principles set out in the legislation.
6. To begin, the County Council agreed to undertake an initial exercise to compare each of the new Codes of Conduct which had been adopted by the seven districts and the LFRS.
7. Although differences were identified, this analysis highlighted that each of the Codes imposed very similar obligations and many, had agreed to retain specific requirements from the previous Code, including:
 - A requirement not to bully or intimidate any person or act in a way which may cause the Authority to be in breach of equality legislation;
 - A requirement to deal with information appropriately, e.g. not disclosing information provided in confidence and not prevent anyone from having access to information to which he/she is entitled;
 - A requirement not to use council resources inappropriately;
 - A requirement not to act in a way which could be regarded as bringing the office or Authority into disrepute;
 - A requirement to have regard to relevant advice provided by officers.
8. The outcome of this exercise was discussed in September 2012 and the ACSeS group was able to reach a consensus on many issues, including many of those areas where differences had been identified. These included the following:
 - that, in accordance with the Act, the Code should only apply when a member is 'acting' in that capacity;
 - that a clear distinction should be drawn between disclosable pecuniary interests, as have been specifically defined by the Act, and other interests which a member may have and which would prevent them from taking part in a debate e.g. an interest which may relate to a family member or close associate; however, the terminology in use in different authorities does vary considerably;

- that the concept of personal interests which would enable a member to declare such an interest and demonstrate their openness, but remain in a meeting, was generally supported;
 - that a requirement for members to register gifts and hospitality worth £50 or more should be retained.
9. The County Council subsequently undertook to prepare an initial draft of a common Code of Conduct for consideration. This was discussed in November 2012.
 10. The area that generated the most debate related to 'Interests'. After considerable discussion a form of words was proposed which would introduce three categories of interest:-
 - i. 'disclosable pecuniary interests' (DPIs), which are defined in the Act; breach of the requirements relating to DPIs could lead to prosecution;
 - ii. 'personal interests' which have been largely retained from the previous Code and which once declared by a member, will not prevent them from taking part in the debate;
 - iii. 'personal interests that might lead to bias' i.e. those interests which a member of the public, with knowledge of the facts, would reasonably regard as so significant as to prejudice a member's judgement of the public interest. Breach of the requirements relating to these interests (which are not DPIs) would not lead to prosecution but could lead to a complaint relating to a Members conduct.
 11. In addition, it is proposed that a distinction is made between those interests which must be registered, and those interests which are of a kind that might arise at a meeting but which a member could not be expected to register in advance.

A Leicestershire Code of Conduct for Members

12. Following these discussions the County Council undertook to produce a further version of the draft common Code of Conduct which Monitoring Officers could take to their Members for consideration. This, latest, draft Code is attached as Appendix 1.
13. It has to be acknowledged that the political realities and practical arrangements for the revision of Codes of Conduct will vary considerably between different authorities and as a consequence different provisions may prove acceptable or contentious in different authorities. However, during the course of the discussions, two particular provisions have been identified as likely to be contentious:-
 - i. Whether or not a member with a DPI should be able to attend a meeting to present issues on his/her own behalf or on behalf of their constituents, but then withdraw before the full discussion or debate takes place. Differing advice on this issue has been received. Advice provided by Queen's Counsel to another local authority expresses a firm opinion that Members would be allowed to act in this way and this reflects existing practice in many authorities prior to the Localism Act in relation to committees where members of the public would be allowed to speak. However, it appears to run contrary to advice from DCLG.

The majority of those attending at the ACSeS meetings indicated that they would be prepared to advise their members along the lines of the advice of the QC. However, it was recognised that this was a difficult issue which should be highlighted to elected Members as any breach of the rules in relation to DPIs could result in criminal prosecution.

- ii. Paragraph 4.12 of the new draft Code provides some guidance to elected Members who serve on more than one local authority. In this context, it should be noted that the Monitoring Officer for the Fire and Rescue Service authority has throughout supported the need for a Common Code of Conduct, but the group has been advised that it is unlikely that parish councils will wish to amend the Code of Conduct which has only recently been adopted by them. The provision in paragraph 4.12 as drafted attempts to recognise that Members should not be prevented from taking part in discussion when they have an electoral mandate from constituents from both authorities, but that there may be exceptional circumstances where a Member cannot take part in a debate at either or both authorities.

- 17. The opportunity has been taken to revise wording in the Code where it has not been clear and to include the revised description of the seven Principles of Public Life adopted by the Committee on Standards in Public Life in January 2013. Other than the changes referred to above, no major change is proposed to the Code which was adopted in July 2012.

4. FINANCIAL IMPLICATIONS [AB]

- [4.1 There are no financial implications relating to this report.

5. LEGAL IMPLICATIONS LH

Within the body of the report

6. CORPORATE PLAN IMPLICATIONS

Strong and Distinctive Communities

7. CONSULTATION

[List the individuals, groups or organisations that have been consulted in the process of the report – this must include the voluntary sector, via Voluntary Action Hinckley & Bosworth]

8. RISK IMPLICATIONS

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Failure to adopt a common code leading to confusion for members for declaring interests	Agree common code or ensure that differences and responsibilities are understood	LH

9. KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS

This applies to Councillors

10. **CORPORATE IMPLICATIONS**

By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

Background papers: None

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