

 Brent	<p align="center">Full Council</p> <p align="center">23 November 2015</p> <p align="center">Report from the Chief Legal Officer</p>
For Action	Wards Affected: ALL
Members' Code of Conduct and Members' Gifts and Hospitality Protocol	

1.0 Summary

- 1.1 This report sets out proposed changes to the Members' Code of Conduct and a draft Members' Gifts and Hospitality Protocol for approval and the consequential amendment to Standing Orders.

2.0 Recommendations

- 2.1 That the Council approve the proposed changes to the Members' Code of Conduct and the consequential amendment to Standing Orders.
- 2.2 That the Council approve the draft Members' Gifts and Hospitality Protocol.
- 2.3 That, if approved, the new Members' Code of Conduct and the Members' Gifts and Hospitality Protocol come into force on 30 November 2015 and the Chief Legal Officer be authorised to discharge the Council's duty to publicise the new Members' Code of Conduct.
- 2.4 That, if approved, the Council authorise the Chief Legal Officer to revise the Licensing and Planning Codes of Practice to reflect the new Members' Code of Conduct.

3.0 Detail

Statutory background

- 3.1 The Council has a statutory duty under the Localism Act 2011 (the Act), to promote and maintain high standards of conduct by elected members and co-opted or appointed members (collectively referred to in this report as

members) of the Council. In particular, the Council has to adopt a code dealing with the conduct that is expected of members when they act in an official capacity. This code has to be consistent with the following principles: selflessness; integrity; objectivity; accountability; openness; honesty and leadership. It also has to make provision for the registration and disclosure of interests by members.

- 3.2 The Council can revise its code at any time but is required to publicise the revision of the code in such manner as it considers is likely to bring the revision to the attention of persons who live in its area.
- 3.3 The function of revising a code of conduct cannot be delegated and has to be discharged by Full Council.

Factual background

- 3.4 The existing Members' Code of Conduct was adopted in July 2012 and revised last year, following an external review of the Council's Licensing and Planning Codes of Practice. This review recommended that consequential changes be made to the Members' Code of Conduct to deal more comprehensively with conflicts of interest, especially non-financial interests.

Revised Members' Code of Conduct and draft Members' Gifts and Hospitality Protocol

- 3.5 A more recent review by the Monitoring Officer and, in particular, a recent Internal Audit report on declaration of interests and gifts and hospitality by members (which was considered by the Audit Committee), highlighted the need for further improvements to be made to the Members' Code of Conduct and formal guidance to members on gifts and hospitality.
- 3.6 Consequently, the revised Brent Council Code of Conduct for Members is attached to this report as Appendix 1 for approval.
- 3.7 In broad terms, changes have been made to the Council's code to improve the wording, formatting and presentation of the document. The textual and technical changes aim to express and explain the requirements of the code more clearly and helpfully.
- 3.8 The table below highlights and explains the substantive changes in greater detail.

Paragraph No.	Heading	Explanation
1(3)	Introduction and interpretation	The code applies to both elected councillors and co-opted members. For the avoidance of doubt, the code now defines the term "co-opted member". It includes

		<p>appointed members with or without voting rights.</p> <p>The council's minimum statutory obligation is to extend its code to co-opted members <i>with</i> voting rights but it is generally considered to be good corporate governance practice to require non-voting co-opted members to comply with the same standards too. The only practical difference is that the criminal offences created by the Act do not apply to non-voting co-opted members.</p>
7(b)	General obligations (use of council resources)	<p>Members use of council resources is restricted.</p> <p>The requirement to have regard to any applicable local authority code of publicity made under the Local Government Act 1986 has been added. This reflects the wording of the former prescribed code which was abolished in 2012.</p> <p>In actual fact, the requirement to comply with the local authority code of publicity is referred to at the end of the existing code.</p> <p>It is suggested that it should also be referred to in this paragraph too.</p>
9	General obligations (training)	<p>The requirement to attend mandatory training on the Members' Code of Conduct and on Members' standards in general has been added.</p> <p>The purpose of this change is to underscore the importance of members ensuring that they know and understand their obligations under the code and how to manage conflicts of interest.</p> <p>The intention is to secure 100% attendance on all mandatory training sessions for members.</p>
11	Registration of interests	<p>The wording has been simplified to make clear that the initial trigger point for the registration of interests is on election or appointment.</p> <p>The existing code states that members are required to register any interests within 28 days of the code being adopted or their election/appointment (whichever is later).</p> <p>However, the Act requires members to register their interests within 28 days of their election or appointment in all circumstances and without</p>

		<p>exception. The existing wording is therefore confusing and misleading as it could be interpreted as extending the statutory deadline.</p> <p>The wording of the existing code requires members to register all of their interests on their re-election. This has been changed to match the requirements of the Act. Namely, members only have to notify the Monitoring Officer of any <i>changes</i> to a registered interest or a <i>new</i> interest.</p>
13(2)(a)	Personal interests	<p>The existing code states that members have a personal interest if, amongst other reasons, their well-being or financial position is affected or if the well-being and financial position of a member of their family or any person with whom they have a close association. For the avoidance of doubt, the term ‘friend’ has now been added.</p>
17 & 18	Disclosure of interests and participation in meeting	<p>The existing code allows members to participate (i.e. make representations, answer questions or give evidence) in meetings, even if they have a prejudicial or disclosable pecuniary interest provided that the public have the same participation rights too.</p> <p>However, according to the Act, unless a dispensation is granted, it is a criminal offence for members to, without reasonable excuse, “participate in any discussion” if they have a disclosable pecuniary interest.</p> <p>According to the DCLG guide to councillors titled “Openness and transparency on personal interests”, if a member has a disclosable pecuniary interest the prohibitions apply “to any form of participation including speaking as a member of the public. Although the guide has no force of law, it is significant and carries weight.</p> <p>The Act clearly overrides the code and it is important therefore that any confusion the wording of the existing code may create is eliminated.</p> <p>Accordingly, the code has been changed to set out separately the consequences of, on the one hand, having a prejudicial interest and, on the other, a disclosable pecuniary interest. The code</p>

		<p>now makes clear if a member has a disclosable pecuniary interest, he/she must not participate in any discussion of, or in any vote on, the matter at the meeting.</p> <p>In these circumstances, members can make written representations or appoint a representative or, at least in principle, apply for a dispensation.</p>
19	Dispensations	<p>The existing code lists some but not all the statutory grounds for granting dispensations.</p> <p>The code has been changed to refer to section 33(2) of the Act but does not specify any of the grounds.</p>
Appendix B, 3)	Personal interests	<p>The existing code requires members to register gifts and hospitality “worth more than an estimated value of £50”.</p> <p>This has been changed as follows:</p> <p>“....a gift or hospitality worth an estimated value of at least £50 in your capacity as a Member. This includes a series of gifts and hospitality from the same person that add up to an estimated value of at least £50 in a municipal year.”</p>
20	Related documents	<p>The Members’ Gifts and Hospitality protocol has been added.</p>

3. 9 The above changes were considered by the Standards Committee at its meeting on 1 October 2015 and the Committee resolved to recommend that that they be approved by the Council. The Committee also resolved to recommend to the Council that the following general obligation be added:

“4. (2) You must not –

(e) make frivolous, vexatious or repeated complaints against another member or an officer of the council.”

- 3.10 The Committee felt that there was a need for the code to make express and specific provision in respect of the risk of members using their position to make complaints which are vexatious etc.
- 3.11 According to the Act, the exclusion of members from a meeting while a discussion or vote takes place because they have a disclosable pecuniary interest should be set out in the Council’s Standing Orders. It is proposed therefore that the following paragraph be added to the Council’s Standing

Orders:

“67B The exclusion of members with a disclosable pecuniary interest

Members must leave the meeting room during the consideration of any item of business in which they have a disclosable pecuniary interest, unless a member is permitted to remain as a result of a dispensation.”

- 3.12 As the requirements of the Members’ Code of Conduct are repeated in the Licensing and Planning Codes of Practice, the Council is asked to authorise the Chief Legal Officer to revise these codes to reflect the proposed changes to the Members’ Code of Conduct.
- 3.13 The draft Members’ Gifts and Hospitality Protocol, which is attached to this report as Appendix 2, is intended to supplement the Members’ Code of Conduct as a non-statutory guidance document. The Protocol reminds members of their Code of Conduct obligations to register and declare gifts and hospitality received in an official capacity worth an estimated value of at least £50; gives examples of different types of gifts and hospitality; provides guidance to members about when it is appropriate to accept gifts and hospitality and the questions members should ask themselves.
- 3.14 As well as the code, the Standards Committee considered the draft Protocol at its last meeting too and resolved to recommend that it be approved by the Council.
- 3.15 If approved by the Council, it is proposed that both the Members’ Code of Conduct and the Members’ Gifts and Hospitality Protocol come into force on 30 November 2015. Further, the Council is requested to authorise the Chief Legal Officer to discharge the Council’s duty to publicise the new Members’ Code of Conduct.

4.0 Financial Implications

- 4.1 There are no specific implications arising from this report.

5.0 Legal Implications

- 5.1 These are addressed in the body of the report.

6.0 Diversity Implications

- 6.1 None.

Background Papers

None

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