

Hoey Ainscough Associates Ltd

Supporting Local Governance

REVIEW OF STRATFORD-ON-AVON DISTRICT COUNCIL'S CODE OF CONDUCT FOR MEMBERS

Introduction

1. The Localism Act 2011 abolished the old National Code of Conduct for members. However, under s27(2) of the Act each council was under a duty to adopt a Code of Conduct and, although the precise form of the Code was to be up to each individual authority, s28(1) of the Act said that the Code had to be consistent with the Seven Principles of public Life (the 'Nolan Principles') and s28(2) said it must contain whichever provisions the authority considered appropriate with regard to registration and declaration of interests. Ss 29 and 30 of the Act further introduced certain mandatory interest requirements (so-called 'disclosable pecuniary interests' or DPIs) which all authorities had to adopt (and which were underpinned by a criminal offence).
2. The Act came into force in July 2012. At that time a number of competing model codes were produced – notably one by DCLG, one by the LGA and one by the National Association of Local Councils. Stratford DC adopted the DCLG model code. All parish councils in the district bar one followed Stratford's lead and adopted the same model.
3. Stratford decided to review its Code and accompanying documents after some five years of operation in light of local experiences of handling cases in practice. In carrying out the review, they wanted to take the views of all relevant stakeholders and consider their arrangements against emerging best local practice elsewhere, bearing in mind local context.
4. Hoey Ainscough Associates Ltd was therefore commissioned to carry out the review as independent national experts. Hoey Ainscough Associates Ltd was set up in April 2012 to support local authorities in managing their arrangements for handling councillor conduct issues. The company was co-founded by Paul Hoey, who had been director of strategy at Standards for England from 2001 until its closure in 2012, and Natalie Ainscough who had worked as his deputy. We have now worked with over 300 authorities in one form or another through provision of training, investigative support and wider governance advice and were therefore uniquely placed to bring that national perspective and depth of understanding of what does and doesn't work effectively.
5. In carrying out our review, we laid down three aims for a successful Code of Conduct and standards process:
 - a) To enhance the reputation of the council and its members through demonstrating that there are clear and effective rules which govern the way they operate, that there is a culture of high standards and that any lapse from high standards in individual cases will be dealt with fairly, effectively and efficiently;

- b) To ensure that the Code is easily understood by members, officers and the public so that the standards to which members are required to adhere are accessible; and
 - c) That it complies with any legal requirements.
6. During the course of the review, we spoke to a number of individuals and groups to understand their perceptions of the current Code, what they believed the purpose of the Code is and what they would find most helpful in terms of the Code and supporting documentation. These were selected senior officers of the Council, together with members of the authority, including the Audit and Standards Committee, members of the Executive and a representative sample of 'backbench' councillors. We also spoke to a representative group of parish council members and clerks as any changes to the Code would be likely to impact upon them as well.

The Stratford Code of Conduct - background

7. As mentioned above, Stratford had adopted the DCLG model code of conduct. As part of our presentation, we explained that Codes of Conduct can broadly be categorised as either 'principles-based' or 'rules-based'. Principle-based codes tend to be high-level and aspirational with very broad statements of modelled behaviour. A rules-based code tends to be more detailed with a set of 'do's' and 'don'ts'. The DCLG Code is broadly principles-based.
8. Proponents of a principles based approach argue that it is robust and flexible because it:
- provides guidance that can be applied to the infinite variations in circumstances that arise in practice
 - can cope with rapid changes of the modern environment
 - prevents the development of a mechanistic, "box-ticking" approach to decision-making and the use of legalistic loopholes to avoid compliance with guidance
 - focuses on the spirit of the guidance and encourages responsibility and the exercise of professional judgement, which are key elements of professions
9. On the other hand, supporters of a rules-based approach argue that compliance with such a Code is easier since the requirements are more prescriptive, less open to interpretation and leave little room for misunderstanding. Furthermore, rules-based approaches are easier to enforce as they set more measurable standards.
10. In practice of course most Codes blend a rules-based and principles-based approach.
11. We also explained that Codes of Conduct could be considered in two parts: the first part setting out the behaviours expected in carrying out your role and interacting with other people; and the second part setting out specific rules with regard to registration and declaration of interests when considering specific business.

Discussion Groups

12. While all those interviewed had different perspectives, common themes emerged from these discussions. These were in particular a feeling that the current Code was not sufficiently clear in setting measurable standards and expectations; the need to keep the Code short and have more detailed guidance with examples of

what was and was not acceptable behaviour; clarity so that both councillors themselves and the public understood expectations and were able to focus what a specific grievance might be about; and a need for clear rules on interests which went beyond the minimum requirements of DPIs.

13. As a result of these discussions we reached a clear understanding that the consensus was for a rules-based rather than principles-based approach as this made it easier to understand what expectations were and meant that it made complaints more focussed on behaviour and less on perceived concerns about the outcomes of decisions or political disagreements. In preparing our recommended Code (attached at Appendix A) we therefore concluded that the existing Code was not 'fit for purpose' for Stratford's specific needs and that, rather than trying to 'modify' the existing Code a new Code was instead needed. We explain some of the specific issues below.

Code - behaviours

14. Looking at the first part of the Code – the section on behaviour – the message we received was that these should be short simple statements and that explanation should be left to guidance. Indeed, one interviewee said that all a Code really need to say was 'don't act inappropriately' and then for it to be explained elsewhere what is and isn't inappropriate. Clearly we felt that being that brief would itself lead to the disputes and ambiguities of interpretation that people were concerned with with regard to the current Code. However, the point was well made that it should be simple and straightforward. Hence we have boiled that part of the Code down essentially to 7 principal 'rules'.

15. These rules could be written in a positive or negative way – for example, 'treat people with respect' or 'do not treat people with disrespect'. Writing them positively makes them a more aspirational standard. However, we decided that if people wanted some clear rules, the negative expression was more appropriate.

16. We think the rules we have set out capture in effect what would be 'inappropriate' behaviour and can be categorised as covering the way you interact with people (disrespect); the way you are entrusted with public money (council resources); the way you are entrusted with information (confidentiality); the way you are entrusted to serve the public good rather than private interests (misuse of position, improper influence, being beholden to others); and the way you are representatives and symbols of the authority (disrepute).

17. These categories could be broken down further or defined on the face of the Code. For example 'do not disclose confidential information unless it is in the public interest to do so' or further still to then go on and define the public interest. However, we believe that would lead to a less 'user-friendly' document which was not the message we received and that those matters are therefore best left to background materials in the form of guidance documents.

18. It should be noted that, while this is a 'rules based' approach there was a recognition that it was helpful to have the Nolan Principles on the face of the Code as a reminder of the wider, more aspirational desire to maintain high standards. We have therefore put those as a preamble to the Code.

19. There was some discussion about whether the Code (putting to one side interests provisions) should simply be the Principles as those set the 'gold standard' against which conduct should be judged. However, the consensus was that, while

the rules themselves were sound and covered the appropriate areas in a very broad way this would not give the clarity needed as to where the line lay or what was unacceptable. It is worth noting that the Committee on Standards in Public Life themselves are very clear that the principles are just that and are not meant to be a proxy for rules, but that rules show how those principles have been practically translated which is what he have attempted to do.

20. We welcome the Committee's views as to whether the approach we have taken seems right; whether we have broadly captured the right areas; whether the 'simple' approach is what is required; and whether we have missed any specific rules out that the Committee thinks should be captured.

Interests

21. By law, all local Codes have to contain provisions on DPIs. These are a specific category of interests set out in regulation which have to be registered and where they crop up in a meeting, declared and the member barred from participating. These are a given and have therefore been directly reproduced in the Code.
22. Those interests only relate to the member's (and his/her partner's) interests. Although the law is rather clumsily drafted it is also widely taken to mean that, for a declarable DPI to occur at a meeting the subject matter must be directly about that interest rather than something merely affecting it. A classic example of this would be your planning application is about your property and hence is a DPI but next door's planning application is not directly about your property (though it may have some effect on it) and hence is not a DPI.
23. These are the only interests in the current Code where specific rules apply – that is, if you have such an interest you must withdraw. However, there was wide recognition that there will be other circumstances where a councillor would have conflict of interest. Classic examples of such an interest which are not captured by the DPI test are, as above an application next door, or an application made by one of your children.
24. In such cases your current Code asks you to balance the public and private interest and resolve the conflict in favour of the public interest. However, that is a subjective test and allows leeway for each councillor to come up with a different answer in similar circumstances as to whether they feel they could participate in or vote on a matter. The consensus from our discussions again was that the broad feeling was that 'the same rules should apply to everyone' and people just wanted a simple test to help them decide whether or not they have an interest.
25. Paragraphs 10-14 of the Code therefore attempt to do this. Unlike the 'behaviour' rules it is difficult to summarise these into just a handful of words. However, essentially what we are saying is that where you (or somebody associated with you) is directly financially affected by a matter you should not participate in the discussion; where they are more indirectly affected you would apply a test as to how far they are affected. That test is in effect the test used by the courts to determine actual or perceived bias.
26. There has always been a balance to be struck for councillors when declaring interests. On the one hand they recognise that they are in a privileged and influential position when considering local matters so should not misuse that position and should not be at a greater advantage than a member of the public when dealing with matters which affect them or their loved ones. However, at times they can feel disadvantaged. They may be unable to put forward a case at

a meeting for something that affects them, whereas a member of the public could; and they may even be unable to advocate on behalf of their constituents' concerns because they happen to be affected personally as well. While the rules set out in the Localism Act on DPIs are absolute (without a dispensation) we have tried to strike this balance for other interests by setting out when a member can speak on a matter – in a sense giving them the same but no more rights than a member of the public who might attend the open part of a meeting.

27. Although we did not discuss this with the groups in any great depth in the time permitted we have also suggested a slight expansion of the registration requirements beyond the statutory minimum. The purpose of a register of interests is twofold – it is to ensure transparency so that people are aware where members may have conflicts of interest and should not be participating in matters; and it is also an aid to the public to know what types of outside interests a councillor might have so that they can seek to work with them on common concerns and interests.
28. We have thus expanded the register to include some registration of outside bodies where, although the member holds no financial stake, may nevertheless be in the public interest to be disclosed. We have not expanded this to include partners' interests. We have also included here the 'gifts and hospitality' register.
29. The committee is asked for their views as to whether they agree with these more explicit interest provisions and if so whether they are sufficiently clear and strike an appropriate balance between protecting the public interest and allowing a councillor to do his or her job effectively.

Official capacity

30. There is one other point we wish to make about the Code. Under the Localism Act, the Code applies to you only when you are acting as a councillor – there is a recognition that private matters are your own business. Hence the Code we have drafted would apply only when on council business or using council resources. That said all respondents recognised that some private matters could nevertheless have a deleterious effect in an individual's reputation, and often the reputation of their political party and the Council in general. Such matters are not strictly Council matters but we would expect the Group to act upon them as appropriate and in certain circumstances which had a wider reputational damage the Council itself to take some sort of view. We have therefore included a statement in the preamble to remind councillors of the need to maintain high standards as representatives of the authority and wider community. The committee is asked for their views as to whether such a statement is appropriate on the face of the Code.

Guidance

31. As a corollary to keeping the Code itself as simple as possible there was a keen desire to have more detailed guidance and supporting documentation underpinning. The Council already has relevant documentation in place or intended to be in place – listed in Part C of the Code. We have not looked at those documents in detail but are happy to help the Council do so to ensure they are in line with the Code and wider principles.
32. However, in addition to those documents members were keen to have more detailed guidance (with exemplars) to help them and the public understand the limits and interpretation of the Code. The Council already has similar guidance on its existing code and we have started to produce guidance for our proposed new

Code (attached at Appendix B). This will be finalised once the wording of the Code itself is settled but comments are invited from the Committee on the approach. We believe there are four strands to this guidance – a broad interpretation of what each paragraph means; a set of definitions to aid interpretation (for example what is meant by a close associate?; what is confidential information?); some examples of what may or may not cross the line; and in due course some cases (whether local or elsewhere) that might have reached some conclusions and interpretations which would be of assistance. This is still a work in progress

Case handling

33. Under the Localism Act, you are required to make arrangements for handling allegations that the Code may have been broken. Although this was a secondary element of our review we were asked to consider this and we did discuss with the groups their experience of case handling at Stratford.
34. The Stratford process itself is very similar to that in most authorities, that is much of the arrangements are delegated to the Monitoring Officer to dispose of (in consultation with the statutory Independent Person as appropriate) with certain matter coming to a hearing of the Committee after an investigation has found a breach of the Code.
35. We feel this high-level process is appropriate in striking the balance between fairness and expediency and most people we spoke to recognised that the process struck the balance about right. However, a couple of themes did emerge – one was about an understandable desire for cases to be disposed of as quickly as possible within reason; and another issue about the need for the process to be better communicated in particular to the parish councils (and by inference to the public). This was particularly true about the need for transparency when it came to the outcome of hearings.
36. We have not examined specific cases or the way they are communicated in sufficient detail to say whether these comments were fair or not but we do recognise that these are common concerns and, if the Committee agrees, we are happy to work with the Monitoring Officer and his team to see how these concerns can be best addressed bearing in mind our experience of good practice elsewhere.

Sanctions

37. A final theme to emerge from our discussions was widespread dissatisfaction with the limited sanctions available to the Council in those rare instances where what you might classify as 'gross misconduct' may be found. This is the most common theme we find in our work with councils and councillors generally. This is because the sanctions permissible under the Localism Act are limited rather than any lack of sanctions in the Stratford process. We know this is of concern to the Committee on Standards in Public Life who intend to review the workings of the local standards framework more generally. The Committee may wish to consider therefore whether it wants to write to CSPL to express its own views on this issue to help them with their own thinking. That said, we are happy to work with the Monitoring Officer to discuss how the available sanctions can be used particularly with regard to publicity based on our experiences from elsewhere.
38. As we explained in the groups, the Government believes that the appropriate actions to be taken for serious misconduct beyond any administrative council actions are in the first instance for the relevant political groups and then ultimately for the electorate through the ballot box. The Committee may therefore

wish also to consider how those messages can be reinforced and consistency of approach assured within and across groups and in terms of information for the electorate.

Recommendations and next steps

39. We recommend that the Committee consider, and as appropriate, approve the draft Code attached as **Appendix A** to this paper as explained above.
40. Subject to any amendments made by the Committee the next steps would be to consult more widely on the draft. As stated above the Code is there both to help members understand the boundaries but also to help members of the public. We are therefore keen to find some way of engaging with the public on this issue. Formal consultation with the parish councils will also be needed. It is our intention to support the Monitoring Officer with consultation over the summer with a view to bringing the Code and supporting documentation back to the Committee and then to full Council in the autumn.

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