



Standards Committee/General Purposes Committee

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Title:	Constitutional Changes: Members Code of Conduct Amendments
Report of:	Head of Legal and Democratic Services
Financial Summary:	There are no direct financial implications
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1. Executive Summary

- 1.1 This report follows a report submitted to the General Purposes Urgency Sub-Committee at its meeting 10th April 2014 which sought approval to the changes to the Members Code of Conduct which had been agreed by the Standards Committee at its meeting on 12th March 2014. The General Purposes Committee has responsibility for recommending changes to the Council's Constitution and the Urgency Sub-Committee was therefore asked to review the proposed changes and recommend the revised Code to the Full Council for adoption. The Standards Committee had previously agreed the revised Code with the addition of Paragraph 9.
- 1.2 At this meeting the General Purposes Urgency Sub-Committee took the opportunity to review the content of the entire Code in detail and subsequently raised two issues which required clarification, as set out in paragraphs 3.2 and 3.5 below. Accordingly, the Urgency Sub-Committee referred these issues to the Standards Committee for further consideration. The Standards Committee is now asked to agree the proposed amendments to the Code as detailed below in Section 3 and attached in full as Appendix A and recommend to the General Purposes Committee for recommendation to the Council to include the revised Code in the Constitution.

2. Recommendation

2.1 Standards Committee

That in view of the decision of the General Purposes Urgency Sub-Committee to refer the issues set out in paragraphs 3.2 and 3.5 of the report to the Standards Committee, the Committee agrees the revisions to the Code proposed by Officers and recommend these to the General Purposes Committee for adoption by the Council as part of the Constitution, at its Annual Meeting on 4th June 2014.

2.2 General Purposes Committee

That the General Purposes Committee be asked to approve the amended wording of the Members' Code of Conduct for inclusion in the Council's Constitution, attached to the report as Appendix A, and recommend this accordingly to the Council for adoption.

3. Background

3.1 At its meeting 10th April 2014 the General Purposes Urgency Sub-Committee agreed proposed changes to the Members Code of Conduct in respect of the addition of Paragraph 9 which provided greater clarity in relation to the importance of maintaining the confidentiality of information which is included in confidential reports or otherwise provided to Members in confidence. However, the Committee also took the opportunity to review the content of the entire Code in detail and subsequently raised two issues which required clarification.

3.2 Firstly, Members raised concerns that the wording of the following provision could be interpreted to suggest that Members' legal responsibility to act in the best interests of the City Council itself, and to take decisions which take into account all material considerations, were secondary to the interests of the residents of their Ward, or residents of the City as a whole:

"As a Member of Westminster City Council my conduct will in particular address the statutory principles of the code of conduct by:

- *Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first"*

3.3 It is fair to say that the above paragraph does represent a considerable over-simplification of the duties of an elected Member. Whilst most decisions taken by the Council will be in the interests of "the whole community" in the broadest sense, Members will often need to make choices of policy and of action which they believe to be in the best interests of all those categories of persons to whom a duty is owed, and in the event of a conflict of interest between one category and another, deciding where the balance ought to lie. The powers and duties the Council exercises are complex, circumscribed by the law and central government policy and guidance, and decisions will often need to be multi-factorial, balancing a range of different factors and interests beyond those of residents. It is not always possible to describe decision-making of this

kind as championing the needs of “residents” or “putting their interest first”. Of course Members can and do champion the needs of residents and put their interests first when acting in a Ward Member capacity.

- 3.4 The general provisions of the Code addressing Member conduct are designed to reflect the seven “Nolan Principles” set out at the beginning of the Code. This provision is no doubt designed to describe the sort of conduct necessary to ensure Members act with “selflessness” and “objectivity”. Given the view of Members that the wording of this provision could be interpreted incorrectly and could leave Members open to undue criticism or misguided allegations of misconduct, and in the light of the above principles, the following revised wording is therefore proposed:

“As a Member of Westminster City Council my conduct will in particular address the statutory principles of the code of conduct by:

- ***Championing the public interest, taking into account the needs of the whole community and in a special way my constituents, including those who did not vote for me”***

- 3.5 Secondly, Members agreed that the wording of Paragraph 8 of the Code relating to interests arising in relation to Policy and Scrutiny Committees, could incorrectly be interpreted to suggest that Cabinet Members are expected to only attend a meeting of the respective Policy and Scrutiny Committee for the purpose of answering questions or giving evidence relating to the business, and must leave the room where the meeting is held immediately after making representations, answering questions or giving evidence. Members noted that Cabinet Members routinely attend Policy and Scrutiny meetings for the purpose of ‘question and answer’ sessions and can (and do) choose to remain in the room for the duration of the meeting, often assisting with discussions on topics within their portfolio.

- 3.6 The Committee recognised that the aforementioned interpretation is not the intended purpose of the provision, nor does it reflect the current practice. Rather, the provision is intended to identify cases where a Member may have previously been a former member of the Executive, committee, sub-committee, joint committee or joint sub-committee which was involved in the determination of a decision, and is now a member of the Policy and Scrutiny Committee which is responsible for scrutinising that same decision. In this case that Member would have an interest in the discussion and would be expected to withdraw from the meeting room for the scrutiny of that decision. In this context Members agreed that this wording required clarification.

The following revised wording is therefore proposed:

- 8. Interests arising in relation to Policy and Scrutiny Committees:**
In any business before a Policy and Scrutiny Committee (or of a sub-committee of such a committee) of your authority on which you are

sitting as a member or are participating in a capacity other than a Cabinet Member where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by the executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and***
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken, you may only attend a meeting of the Policy and Scrutiny Committee for the purpose of answering questions or giving evidence relating to the business, and you must leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.***

For the avoidance of doubt this does not preclude current Cabinet Members from remaining in the room to listen to the discussion.

4. Financial Implications

4.1 There are no financial implications.

5. Legal Implications

5.1 These are set out in the body of the report.

6. Conclusion

6.1 The General Purposes Urgency Sub-Committee raised two issues relating to specific provisions of the Members' Code of Conduct, as detailed above, and requested that amendments to these provisions be referred to the Standards Committee for consideration. Amendments have therefore been proposed which ensure the requirements relating to Members' conduct are entirely clear, are not likely to lead to incorrect interpretations and accurately reflect the Council's practices. The Committee is asked to approve these amendments accordingly for recommendation to the full Council.

**If you have any questions about this report, or wish to inspect one of the background papers, please contact
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Members' Code of Conduct

As a Member or Co-opted Member of Westminster City Council I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority.

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

As a Member of Westminster City Council my conduct will in particular address the statutory principles of the code of conduct by:

- Championing the public interest, taking into account the needs of the whole community and in a special way my constituents, including those who did not vote for me
- Dealing with representations or enquiries from residents, members of our communities and visitors fairly, appropriately and impartially.
- Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the

interests of the City Council or the good governance of the authority in a proper manner.

- Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a Member/Co-opted Member of this authority.
- Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
- Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
- Contributing to making this authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other members to account but restricting access to information when the wider public interest or the law requires it.
- Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
- Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
- Always treating people with respect, including the organisations and public I engage with and those I work alongside.
- Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

Registration and Disclosure of Interests

The Act further provides for registration and disclosure of interests and in Westminster City Council this will be done as follows:

1. Disclosable pecuniary interests

A note summarising the requirements of the Localism Act 2011 in relation to disclosable pecuniary interests is attached to the Code as **Appendix A**.

2. Notification of interests

1. In addition to the disclosable pecuniary interests notifiable under the Localism Act 2011, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

notify the Monitoring Officer in writing of the details of your other personal interests, where they fall within the following descriptions, for inclusion in the register of interests.

2. You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect:

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body

(b) exercising functions of a public nature;

(c) directed to charitable purposes; or

(d) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;

3. You must, within 28 days of becoming aware of any new interest or change to any interest registered under paragraph (1), or as a disclosable pecuniary interest notify the Monitoring Officer of the details of that new interest or change.

3. Disclosure of interests

1. Subject to sub-paragraphs (2) to (5), where you have a personal interest described in section 2 above or in paragraph (2) below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of the personal interest, and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

2.
 - (a) You have a personal interest in any business of your authority where a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a *relevant person* to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
 - (b) In sub-paragraph (2)(A), a *relevant person* is—
 - (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in paragraph 2(2)(a)(i) or (ii).
3. Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 2(2)(a)(i) or 2(2)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
4. Where you have a personal interest but, by virtue of Section 6, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.
5. Where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

4. Register of interests

Any interests notified to the Monitoring Officer will be included in the register of interests. A copy of the register will be available for public inspection and will be published on the authority's website.

5. Gifts and Hospitality

You must, within 28 days of receipt, notify the Monitoring Officer in writing of any gift, benefit or hospitality with a value in excess of £25 which you have accepted as a member from any person or body other than the authority. The Monitoring Officer will place your notification on a public register of gifts and hospitality. This duty to notify the Monitoring Officer does not apply where the

gift, benefit or hospitality comes within any description approved by the authority for this purpose.

6. Sensitive interests

Where you consider that disclosure of the details an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have an interest, the details of which are withheld.

7. Non participation in case of prejudicial interest

1. Where you have a personal interest in any business of your authority, you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and where that business—
 - (a) affects your financial position or the financial position of a person or body described in Section 3; or
 - (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in Section 3.
2. Subject to paragraph (3) and (4), where you have a prejudicial interest in any business of your authority—
 - (a) You may not participate in any discussion of the matter at the meeting.
 - (b) You may not participate in any vote taken on the matter at the meeting.
 - (c) If the interest is not registered, you must disclose the interest to the meeting.
 - (d) If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

Note: In addition this Code and Standing Orders requires you to leave the room where the meeting is held while any discussion or voting takes place.
3. Where you have a prejudicial interest in any business of your authority, you may attend a meeting but only for the purpose of making

representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise and you leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

4. Subject to your disclosing the interest at the meeting, you may attend a meeting and vote on a matter where you have a prejudicial interest that relates to the functions of your authority in respect of:
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to members;
 - (v) any ceremonial honour given to members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.
5. Where, as an executive member, you may discharge a function alone, and you become aware of a prejudicial interest in a matter being dealt with, or to be dealt with by you, you must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter, or seek improperly to influence a decision about the matter.

8. Interests arising in relation to Policy and Scrutiny Committees

In any business before a Policy and Scrutiny Committee (or of a sub-committee of such a committee) of your authority on which you are sitting as a member or are participating in a capacity other than a Cabinet Member where—

- (a) that business relates to a decision made (whether implemented or not) or action taken by the executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken, you may only attend a meeting of the Policy and Scrutiny Committee for the purpose of answering questions or giving evidence relating to the business, and you must leave the room where the meeting is held immediately after making representations, answering questions or giving evidence.

For the avoidance of doubt this does not preclude current Cabinet Members from remaining in the room to listen to the discussion.

- 9. You must not disclose information given to you in confidence by anyone, or information you acquire which you believe, or ought reasonably to be aware, is of a confidential nature, except where:-

- (a) you have the consent of the person authorised to give it; or
- (b) you are required by law to do so; or
- (c) the disclosure is made to a third party for the purposes of obtaining professional advice provided that the third party agrees not to disclose the information to any other party; or
- (d) the disclosure is
 - (i) reasonable and
 - (ii) in the public interest; and
 - (iii) made in good faith and in compliance with the reasonable requirements of the Council”.

APPENDIX A

Note on Disclosable Pecuniary Interests

This note explains the requirements of the Localism Act 2011 (Ss 29-34) and The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012, in relation to disclosable pecuniary interests. These provisions are enforced by criminal sanction. They come into force on 1 July 2012.

1. Notification of disclosable pecuniary interests

Within 28 days of becoming a member or co-opted member, you must notify the Monitoring Officer of any 'disclosable pecuniary interests'.

A 'disclosable pecuniary interest' is an interest of yourself or your partner (which means spouse or civil partner, a person with whom you are living as husband or wife, or a person with whom you are living as if you are civil partners) within the following descriptions:

(In the extracts from the Regulations below, 'M' means you and 'relevant person' means you and your partner, as above)

<i>Subject</i>	<i>Prescribed description</i>
<i>Employment, office, trade, profession or vacation</i>	<i>Any employment, office, trade, profession or vocation carried on for profit or gain.</i>
<i>Sponsorship</i>	<i>Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.</i>
<i>Contracts</i>	<i>Any contract which is made between the relevant person (or a body in which the relevant person has 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.</i>
<i>Land</i>	<i>Any beneficial interest in land which is within the area of the relevant authority.</i>
<i>Licences</i>	<i>Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.</i>

Corporate tenancies

Any tenancy where (to M's knowledge)—
(a) the landlord is the relevant authority; and
(b) the tenant is a body in which the relevant person has a beneficial interest.

Securities

Any beneficial interest in securities of a body where—
(a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; 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.

These descriptions on interests are subject to the following definitions;

“the Act” means the Localism Act 2011;

“body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest;

“director” includes a member of the committee of management of an industrial and provident society;

“land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for the relevant person (alone or jointly with another) to occupy the land or to receive income;

“M” means a member of a relevant authority;

“member” includes a co-opted member;

“relevant authority” means the authority of which M is a member;

“relevant period” means the period of 12 months ending with the day on which M gives a notification for the purposes of section 30(1) or section 31(7), as the case may be, of the Act;

“relevant person” means M or any other person referred to in section 30(3)(b) of the Act;

“securities” means shares, debentures, debenture stock, loan stock, bonds, 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.

2. Register of interests

Any interests notified to the Monitoring Officer will be included in the register of interests.

A copy of the register will be available for public inspection and will be published on the authority's website.

3. Sensitive interests

Where you consider that disclosure of the details of a disclosable pecuniary interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, if the interest is entered on the register, copies of the register that are made available for inspection and any published version of the register will exclude details of the interest, but may state that you have a disclosable pecuniary interest, the details of which are withheld under Section 32(2).

4. Non participation in case of disclosable pecuniary interest

(a) If you are present at a meeting of the authority, or any committee, sub-committee, joint committee or joint sub-committee of the authority, and you have a disclosable pecuniary interest in any matter to be considered or being considered at the meeting.

1. You may not participate in any discussion of the matter at the meeting.
2. You may not participate in any vote taken on the matter at the meeting.
3. If the interest is not registered, you must disclose the interest to the meeting.
4. If the interest is not registered and is not the subject of a pending notification, you must notify the Monitoring Officer of the interest within 28 days.

Note: In addition, in accordance with this Code and Standing Orders, you are required to leave the room where the meeting is held while any discussion or voting takes place.

(b) Where an executive member may discharge a function alone and becomes aware of a disclosable pecuniary interest in a matter being dealt with or to be dealt with by her/him, the executive member must notify the Monitoring Officer of the interest and must not take any steps or further steps in the matter.

5. Dispensations

The authority may grant you a dispensation, but only in limited circumstances, to enable you to participate and vote on a matter in which you have a disclosable pecuniary interest.

6. Offences

It is a criminal offence to

- Fail to notify the Monitoring Officer of any disclosable pecuniary interest within 28 days of election.
- Fail to disclose a disclosable pecuniary interest at a meeting if it is not on the register.
- Fail to notify the Monitoring Officer within 28 days of a disclosable pecuniary interest that is not on the register that you have disclosed to a meeting.
- Participate in any discussion or vote on a matter in which you have a disclosable pecuniary interest.
- As an executive member discharging a function acting alone, and having a disclosable pecuniary interest in such a matter, failing to notify the Monitoring Officer within 28 days of the interest.
- Knowingly or recklessly providing information that is false or misleading in notifying the Monitoring Officer of a disclosable pecuniary interest or in disclosing such interest to a meeting.

The criminal penalties available to a court are to impose a fine not exceeding level 5 on the standard scale and disqualification from being a councillor for up to 5 years.