

## NON-EXEMPT

### EAST HAMPSHIRE DISTRICT COUNCIL

---

**Council**

**16 January 2020**

#### **APPROVAL FOR INTERIM AMENDMENTS TO THE CODE OF CONDUCT**

**Chairman of Standards Committee**

**FOR RECOMMENDATION TO FULL COUNCIL**

**Director: Chief Financial Officer**

**Author: Head of Legal Services**

---

#### **1.0 Purpose of the paper**

- 1.1 This paper is to inform Full Council of an amendment to the Code of Conduct in relation to other interests. The Localism Act 2011 provides a statutory regime for pecuniary interests for local authorities and allows individual councils to consider how members deal with other interests in their own area that is consistent with local need.
- 1.2 EHDC's Code of Conduct is a light touch code and does not currently offer any guidance on how members should address other interests. The suggested amendments are an interim proposal pending full review of the constitution to assist members of both the district and parish councils in deciding how best to approach other interests when a potential conflict is identified.

#### **2.0 Recommendations**

- 2.1 Agree the amendment to the Code of Conduct in respect of other interests as set out in Appendix 1.
- 2.2 Agree the amendment to the Code of Conduct in respect of equalities to support confidence in the Office of Councillor as set out in Appendix 2.

#### **3.0 Executive summary**

- 3.1 The constitution of EHDC is being reviewed through a joint sub-committee. The full Code of Conduct review will be undertaken by a working group of the Standards Committee and will make recommendations to the constitutional sub-committee. The sub-committee is due to report to Full Council with a fully revised Code of Conduct in good time for adoption at

Annual Council in May 2020. This amendment is an interim measure to assist members and to give effect to recommendation 7 of the recent report by the Committee for Standards in Public Life - titled *Local Government Ethical Standards* published in January 2019.

- 3.2 The Localism Act through primary legislation, supported by statutory instrument, concentrates on the disclosure and registration of pecuniary interests. This was felt so important, that a breach of those regulations constitutes a criminal offence. It should be noted that these pecuniary interests cover not only the elected members, but also their partners.
- 3.3 Local authorities are not required by statute to include non-pecuniary interests on a register of interests, nor is there a statutory obligation to inform members on how to deal with non-pecuniary interests when they arise. These other interests have over the years been described as prejudicial interests, non-pecuniary interests, disclosable other interests and so on.
- 3.4 The absence of a statutory test means the member must rely on the common law principles, which is a reasonable bystander test. There have been many formulations and both Wales and Scotland have their own guidance.
- 3.5 The essence of the test is an attempt to identify if an interest amounts to an 'other' interest by asking:

if the interest is it one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to, or be perceived to, prejudice your balancing of the public interest, or your role in decision making, as a councillor. If the answer is yes, then it is likely to be an 'other' interest.
- 3.6 This is in part covered by a reference in the Code of Conduct to Planning committees, but our Code of Conduct is silent on other circumstances. It is therefore proposed that this void is filled on an interim basis by the additional of the words in Appendix 1.
- 3.7 Councillors, particularly those holding office over a long period of time, have a high degree of involvement in the community. It is a primary function of a councillor to be involved in the community and may arise through appointments at Full Council to outside bodies, or it may be that they have a genuine outside interest. It is important the Councillors are confident in understanding where in EHDC the balance between a positive contribution to debate through well informed community knowledge and an interest that requires disclosure is drawn.
- 3.8 It is therefore suggested, that clarification is provided in the case of other interests, such as where a member is about to be, or has recently been in, a position of control or a guiding mind of another organisation, such as a committee member, treasurer, or trustee. In such circumstances there is likely to be such a close connection with that organisation that, if business

came before the council in relation to that body, it is likely a reasonable bystander would assume the relationship may influence a member's ability to make a fair and impartial decision.

- 3.9 It is not proposed to create a register of these other interests as an interim measure, but to make a clear requirement that when a matter or business of the council where an interest arises is discussed, the member is under an obligation to disclose it. After disclosure the current code of conduct does not require the member to take any defined steps, it is therefore suggested (and this is consistent with the recommendation of the recent report), if an interest is sufficient to require a declaration then the member should take no further part in the discussion, should leave the meeting and not vote.
- 3.10 The wording in Appendix 1 also attempts to make it clear that mere membership of an organisation or links to an organisation would not be sufficient in most circumstances to create a declarable interest. The member will need to consider their own circumstances and it will be up to the individual member in each case to consider the nexus of their relationship with the organisation when weighed against the matter to be discussed at the meeting.
- 3.11 It is not possible to completely divorce standards and ethical conduct from the political environment. The suggested clarification of the code is, in part, designed to allow members a defensible route for decision making and allow members of the public to understand that not all interests prohibit members from participation in debate and vote on business before the council.
- 3.12 This would have no impact on the obligations of councillors under section 25 of the Localism Act 2011, which draws a firm distinction between pre-disposition and pre-determination and is relevant to the participation of councillors in certain decisions or votes.
- 3.13 Appendix 2 arises from an issue raised at the Standards Committee which aligns with the general issues around the conduct of a councillor bringing the office of councillor into disrepute. It was suggested that, as leaders in the community, Councillors were in a position where they should positively promote the issues of equality and tolerance.
- 3.14 It is suggested that specific wording may be included to reinforce that all members of have an obligation when making political statements, announcements or when in debate that their choice of language is important. It was suggested that a statement giving a positive community leadership role would assist and reassure the public that no matter how difficult or sensitive a subject the Councillors of EHDC would not use language that denigrates, incites ill will, or injures, or is harmful to any group of people on the grounds of any of the known protected characteristics in Section 4 Equality Act 2010.

#### **4.0 Additional budgetary implications**

4.1 None

#### **5.0 Background and corporate strategy and directorate business plan(s)**

5.1 This links directly to the production of a revised constitution as delegated by council to the sub-committee which met on the 14 October 2019.

#### **6.0 Options and reasons for recommending relevant option**

6.1 Option 1: Do Nothing. This option is the simplest and requires no effort and little resource.

6.2 Option 2: Accept the recommendation which will in part will mitigate the gap in the code of conduct and hopefully assist members and ensure the council maintains its reputation for high public confidence.

#### **7.0 Equality Impact Assessment**

7.1 If Appendix 2 is adopted, there will be a clear commitment to promoting equality.

#### **8.0 Resource implications**

7.1 Financial implications: None

7.2 Human Resource implications: None

7.3 Information Governance implications: None

7.4 Other resource implications: Additional resource implications will be met by the Monitoring Officer team out of existing resources.

#### **9.0 Legal implications**

9.1 The proposed amendments will assist in reducing risk. It will assist District Councillors and if adopted Parish Councillors in determining their obligations under the Code of Conduct. It will give early implementation of one of the report recommendations in which it was stated that the current regime was too 'light touch' to maintain the public confidence.

#### **10.0 Significant risks**

10.1 The do-nothing option risks future challenge. The risk of challenge increases over time as there is more opportunity for mis-judgements to occur.

## **11.0 Consultation**

11.1 This is a recommendation from the Standards Committee.

## **12.0 Communication**

12.1 The constitution will be republished in its amended form.

### **Appendix 1 - 2**

**Appendix 1 Suggested wording in respect of 'other' interests**

**Appendix 2 Suggested wording in respect of equalities and confidence in the office of Councillor.**

Agreed and Signed off by:

Monitoring Officer:

S151 Officer:

Portfolio Holder:

**Contact Officer:** David Brown  
**Job Title:** Interim Head of Legal Services  
**Telephone:** 023 9244 6524  
**E-Mail:** [David.Brown@easthants.gov.uk](mailto:David.Brown@easthants.gov.uk)

## **Appendix 1 – to be inserted at**

### **East Hampshire District Council Code of Conduct for Councillors as new paragraph 8 and to subsequent renumbering of remaining paragraphs.**

#### **Non-pecuniary interests or other interests**

##### **8. Disclosure of Other Interests**

(1) Where you have an interest described in subparagraph (2) below in any business of your authority, and where you are aware or ought reasonably to be aware of the existence of that 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 disclosable interest is a non-pecuniary interest and 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 judgment of the public interest.

Disclosable interests may arise in any situation. Some examples are provided to assist Councillors interpreting the facts of their own circumstances.

- a) Where a councillor is a member or in a position of general control or management of another body as a result of appointment or nomination by your authority.
- b) Where a councillor is a senior member or in a position of general control or management of another body such as a committee member, treasurer, trustee of another body.
- c) Where a Councillor has received a gift or hospitality within the last 12 months with an estimated value of at least £50.
- d) Where it might reasonably be regarded as affecting your well-being, benefitting a member of your family or any person with whom you have a close association, to a greater extent than the majority of other council tax payers.

(3) Where you consider that disclosure of the details of an interest could lead to you, or a person connected with you, being subject to violence or intimidation, and the Monitoring Officer agrees, you may state that you have an interest, the details of which are withheld with the agreement of the Monitoring Officer

(4) Where a Councillor has a disclosable interest, they may [be present but] not participate in any discussion of the matter at the meeting and may not participate in any vote taken on the matter at the meeting.

**Appendix 2 - Equalities and Confidence in the office of Councillor.**

**To be inserted under paragraph 8 as new (xvii) and renumber the remaining paragraphs.**

(xvii) To promote equal treatment and access to services for all people. Where possible challenge language that denigrates, incites ill will, injures, or is harmful to any group of people, in particular on the grounds of age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

DRAFT