



**NOTICE OF MEETING**

<b>Meeting:</b>	<b>Standards Committee</b>
<b>Date and Time:</b>	<b>Tuesday 3 November 2020 5.00 pm</b>
<b>Place:</b>	<b>Council Chamber</b>
<b>Telephone Enquiries to:</b>	<b>Helen Vincent committeeservices@hart.gov.uk</b>
<b>Members:</b>	<b>Ambler, Argent, Bailey, Clark, Clarke, Dorn, Kennett, Kern, Monks and Neighbour</b>

Joint Chief Executive

CIVIC OFFICES, HARLINGTON WAY  
FLEET, HAMPSHIRE GU51 4AE

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**AGENDA**

**This meeting is being administered under the provisioning of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meeting) (England and Wales) Regulations 2020. The Provision made in this regulation applies notwithstanding any prohibition or other restriction contained in the standing orders or any other rules of the Council governing the meeting and such prohibition or restriction had no effect.**

**This Agenda and associated appendices are provided in electronic form only and are published on the Hart District Council Website**

**1 MINUTES OF PREVIOUS MEETING (Page 3)**

The Minutes of the meeting on 13 August 2020 are attached to be confirmed and signed as a correct record.

## **2 APOLOGIES FOR ABSENCE**

To receive any apologies for absence from Members\*

**\*Note:** Members are asked to email Committee Services in advance of the meeting as soon as they become aware they will be absent.

## **3 DECLARATIONS OF INTEREST**

To declare disclosable pecuniary, and any other, interests\*.

**\*Note:** Members are asked to email Committee Services in advance of the meeting as soon as they become aware they may have an interest to declare.

## **4 HART MEMBERS' CODE OF CONDUCT - UPDATE (Pages 4 - 19)**

To consider an adjustment to the Hart Members Code of Conduct.

## **5 GUIDANCE ON THE CODE OF CONDUCT - PUBLIC INTEREST TEST (Pages 20 - 24)**

To seek Standards Committee's agreement to the public interest test as set out in Appendix 1 of the report.

**Date of Publication: Monday, 26 October 2020**

# Public Document Pack Agenda Item 1

## **STANDARDS COMMITTEE**

**Date and Time:** Thursday 13 August 2020 at 6.00 pm

**Place:** Council Chamber

**Present:**

Ambler, Argent, Bailey, Clarke, Dorn, Kennett, Kern and Neighbour

**Officers:** Phillips

### **1 ELECTION OF CHAIRMAN AND VICE CHAIRMAN**

Alastair Clark was elected as Chairman and Councillor Tony Clarke was elected as Vice-Chairman.

### **2 MINUTES OF PREVIOUS MEETING**

The minutes of the meeting 20 January 2020 were agreed and signed as a correct record.

### **3 APOLOGIES FOR ABSENCE**

Apologies had been received from Alastair Clark and Trish Monks.

### **4 DECLARATIONS OF INTEREST**

Councillor Dorn declared that he was also a Member of Crondall Parish Council.

### **5 STANDARDS COMMITTEE TERMS OF REFERENCE**

This item was deferred to a future meeting of Standards Committee.

The meeting closed at 6.30 pm

## STANDARDS COMMITTEE

**DATE OF MEETING: 3 NOVEMBER 2020**

**TITLE OF REPORT: MEMBERS' CODE OF CONDUCT – UPDATE**

**Report of: Monitoring Officer**

### **1 PURPOSE OF REPORT**

- 1.1 To present for consideration an update to the Hart District Council Members Code of Conduct (update with tracked changes attached as Appendix 1).

### **2 RECOMMENDATION**

Standards Committee recommends to Full Council that the HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT be adjusted in the form as set out in Appendix 1.

### **3 BACKGROUND**

- 3.1 Codes of conduct play an important role in upholding ethical standards in an organisation. They are not an alternative to values and principles, but they make clear how those values and principles should be put into practice. They enable people to be held to account for their actions by setting out clear expectations about how they should behave .

### **4 WHEN DOES THE CODE APPLY?**

- 4.1 The current Hart Code of Conduct states:

*The rules of good conduct apply to you whenever you act in your official [my emphasis] capacity. This includes whenever you conduct business of the Council or act, claim to act, or give the impression or reasonable perception that you are acting in your official [my emphasis] capacity as representative of the Council which includes when using social media.*

### **5 THE ISSUE**

- 5.1 The term “official” is a hangover from the pre-Localism Act arrangements and experience has confirmed that it creates an unnecessary and artificial tension in determining exactly when the Code applies. In the Courts have held that with the inclusion of “official” there must be something about the conduct more than simply acting, claiming to act or giving the impression that one is acting as a member.
- 5.2 The evidence suggests that the current narrow scope of the code of conduct makes it difficult to effectively deal with some instances of poor behaviour, particularly in relation to social media use. The Parliamentary Committee on

Standards in Public Life has confirmed that codes of conduct should apply to local councillors when they are acting in any capacity as a councillor and not be confined simply to “official” Council business<sup>1</sup>. The Local Government Association in its recent consultation on a possible Model Code of Conduct<sup>2</sup> has recognised this distinction too.

- 5.3 In Scotland, the code of conduct applies to councillors where a member of the public would reasonably consider the member was acting as a councillor<sup>3</sup>. Factors such as whether the behaviour took place on council property, or through a social media account identifying the individual as a councillor, would be considered in deciding whether the code of conduct applied. Even if the councillor behaved in a seriously inappropriate way, the code would not apply if there was no suggestion that they were acting as a councillor when they did so.
- 5.4 In Wales, the code of conduct applies both when a councillor is acting in their official capacity and when they behave in a way that could “[...] *reasonably be regarded as bringing [their] office or [their] authority into disrepute*”<sup>4</sup>. This includes any time a councillor tries to use their position to gain advantages (or to avoid disadvantages) for themselves or others or misuses their local authority’s resources.
- 5.5 The Welsh Ombudsman has also issued guidance on the application of the code of conduct to social media use.
- 5.6 Public Service Ombudsman for Wales social media guidance:
- “If you refer to yourself as councillor, the code will apply to you. This applies in conversation, in writing, or in your use of electronic media. There has been a significant rise in complaints to me concerning the use of Facebook, blogs and Twitter. If you refer to your role as councillor in any way or comments you make are clearly related to your role then the code will apply to any comments you make there.”*<sup>5</sup>
- 5.7 The widespread use of social media presents a particular challenge to deciding whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, the Parliamentary Committee on Standards in Public Life considers it clear that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies. This

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[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777315/6.4896\\_CO\\_CSPL\\_Command\\_Paper\\_on\\_Local\\_Government\\_Standards\\_v4\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF)

<sup>2</sup> <https://www.local.gov.uk/local-government-association-model-member-code-conduct-consultation#application-of-the-code>

<sup>3</sup> <file:///C:/Users/daryl/Downloads/00538135.pdf>

<sup>4</sup> The Local Authorities (Model Code of Conduct) (Wales) Order 2008, Schedule, section 2(c)

<sup>5</sup> Public Service Ombudsman for Wales (2016), The Code of Conduct for members of local authorities in Wales: Guidance from the Public Services Ombudsman for Wales. Available online at: <https://www.ombudsman.wales/wp-content/uploads/2018/03/Code-of-Conduct-CCCBC-NPA-August-2016.pdf>

would be the case even if the individual posts a 'disclaimer' to suggest the account is a personal one. This is because it is reasonable to regard a Member's use of the term "Councillor" as being for no other purpose other than to identify themselves as a councillor.

## **6 THE PROPOSAL**

- 6.1 The proposal is to adjust the current wording of the Hart Code of Conduct and to follow the Scottish example:

***"The rules of good conduct must be observed in all situations where you act as a councillor or are perceived as acting as a councillor, including representing the Council on official business and when using social media".***

- 6.2 In addition, and for the avoidance of doubt, it is proposed in line with the Public Service Ombudsman for Wales social media guidance to add the following footnote:

***"If you refer to yourself as councillor, or you use a social media account in a way that identifies you as a councillor or you make comments relating to your role as a councillor, then the Code of Conduct applies. This would be the case even if you post a 'disclaimer' to suggest that the account is a personal one."***

- 6.3 This is because even with adding a 'disclaimer' the underlying intention is still to use the account in the context of the capacity as acting as a councillor. Adding a disclaimer should not therefore be used to distance the action from the Code of Conduct.
- 6.4 The purpose of this adjustment to the Code of Conduct is solely to bring clarity to when the Code of Conduct applies. It does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression<sup>6</sup> must be respected by councils when adjudicating on potential misconduct, considering the increased protection given to political expression.
- 6.5 The only other change suggested is for completeness to include reference to "harassment" in the context of bullying and intimidation. Harassment is repeated behaviour which upsets or annoys people.

**Contact Details: Daryl Phillips [daryl.phillips@hart.gov.uk](mailto:daryl.phillips@hart.gov.uk)**

Appendix 1 – draft updated Hart Members Code of Conduct 2020

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<sup>6</sup> [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

**HART DISTRICT COUNCIL  
MEMBERS' CODE OF CONDUCT 2020  
(DRAFT)**

# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

## INTRODUCTION

This Code of Conduct (the Code) applies to every elected member and co-opted member<sup>1</sup> of Hart District Council. As a Councillor, it is your responsibility to make sure that you are familiar with, and that your actions comply with, its provisions.

The Code does not apply to the actions of the authority as a whole, nor to the conduct of its officers and employees. It also does not cover matters under the Localism Act 2011 where criminal sanctions apply.

The Code is not intended to be an exhaustive list of all the obligations that are placed on Members. Councillors hold public office under the law and must observe the rules of conduct stemming from the law, this Code, and the rules, standing orders and regulations of the Council. It is your personal responsibility to comply with these and review regularly, at least annually, particularly when your circumstances change. You must not, at any time, advocate or encourage any action contrary to the Code.

A very clear line, however, must be drawn between this Code's requirements of respect for others, including those with opposing views, and the freedom to disagree with the views and opinion of others. In a democracy, members of public bodies should be able to express disagreement publicly with each other. Nothing within this Code seeks to stifle free speech.<sup>3</sup>

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<sup>1</sup> Co-opted member is a person who is not an elected Member of the Council but who is either a member of any committee or sub-committee of the Council, or a member of, and represents the Council on any joint committee or joint sub-committee of the Council and who is entitled to vote on any question that falls to be decided at that meeting of that committee or sub-committee

<sup>3</sup> Councillors will not be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. ECHR Article 10 rights to freedom of expression<sup>3</sup> must be respected by councils when adjudicating on potential misconduct, considering the increased protection given to political expression



**HART DISTRICT COUNCIL  
MEMBERS' CODE OF CONDUCT 2020**

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# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

## KEY PRINCIPLES OF THE CODE OF CONDUCT

The following general principles<sup>4</sup> upon which this Code of Conduct is based should be used for guidance and interpretation only. They define the standards that members should uphold and serve as a reminder of the purposes of the Code of Conduct. These principles accompany, but do not form part of, the Code of Conduct itself. However, a failure to act in accordance with these general principles may in itself amount to a breach of the Code of Conduct.

**Duty** - You have a duty to uphold the law and act in accordance with the law and the public trust placed in you. You have a duty to act in the interests of the Council as a whole and all the communities served by it and a duty to be accessible to all the people of the area for which you have been elected to serve, and to represent their interests conscientiously.

**Selflessness** - You must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself.

**Objectivity** - In carrying out public business you must make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

**Accountability** - You are accountable to the public for your decisions and actions and must submit yourself to the scrutiny necessary to ensure this. You have a duty to consider issues on their merits, taking account of the views of others, and you must ensure that the Council uses its resources prudently and in accordance with the law.

**Openness** - Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

**Honesty and integrity** - You must be truthful and you must not place yourself in situations where your honesty and integrity may be questioned. You must not behave improperly and must on all occasions avoid the appearance of such behaviour.

**Leadership** - You must promote and support high standards of conduct when serving in your public post, in particular as characterised by the above requirements, by leadership and example in a way that secures or preserves public confidence.

**Respect** - You must respect all other councillors and all Council employees and the role they play. Similarly, you must respect members of the public when performing duties as a Councillor.

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<sup>4</sup> Article 28 of the Localism Act 2011.

# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

## GENERAL PRINCIPLES

The rules of good conduct apply in all situations where you act as a councillor or are perceived as acting as a councillor, including representing the Council on official business and when using social media.<sup>5</sup>

You may also act as a representative of the Council on another body, for example where you have been appointed by the Council to an outside body. When acting for that other body, you must comply with the Hart Code of Conduct, unless it conflicts with lawful obligations of the other body.

### 1. You must treat others with respect

You should follow the principles of mutual respect in all your dealings and be prepared to accept that others may have equally strong views in good faith that differ from your own.

You should always treat colleagues with respect and not engage in any behaviour towards other members or staff which might reasonably be interpreted as discriminatory, bullying or harassment.

In politics, rival groupings are common, either in formal political parties or more informal alliances. It is expected that each will campaign for their ideas, and they may also seek to discredit the policies and actions of their opponents. Criticism of ideas and opinion is part of democratic debate and does not in itself amount to bullying or failing to treat someone with respect.

You must be careful not to act in a way which may amount to any of the prohibited form of discrimination or do anything that hinders the Council's fulfillment of its positive duties under equality laws. Such conduct may cause the Council to breach the law, and you may find yourself subject to complaint that you have breached the Code of Conduct.

It is not disrespectful to question political opinions or to have a different point of view to somebody. It is disrespectful however, to use offensive language or to accuse them of dishonesty, wrongdoing or incompetence

without producing any specific evidence, thereby seeking to damage their reputation.

While of course it is legitimate for you to express concern about the way in which a service is run or policy is being implemented by officers, you should avoid undermining, or making detrimental remarks about, individual named officers at meetings, or in any public forum, including on social media. This would be damaging both to effective working relationships and to the public respect for the Council. It is also unfair as in general, staff are unable to defend themselves against criticism in a public forum.

Chairman of meetings are expected to apply the rules of debate and procedure rules or standing orders to prevent abusive or disorderly conduct.

### 2. Do not bully, harass or intimidate another person

Bullying is offensive, intimidating, malicious, insulting or humiliating behaviour which attempts to undermine, hurt or humiliate an individual or group. It can have a damaging effect on a victim's confidence, capability and health. Harassment is repeated behaviour which upsets or annoys people.

Intimidation is another form of bullying. It is the act of frightening someone into doing something that they do not otherwise want to do. This usually involves threats that make the person who is subjected to intimidation feel threatened or afraid.

Bullying, harassment and intimidatory conduct can involve behaving in an abusive or threatening way, or making allegations about people in public, in the company of any of their colleagues, through the press or social media. It may happen once or be part of a pattern of behaviours, although minor isolated incidents are unlikely to be considered bullying or harassment.

### 3. Do not compromise the impartiality of anyone who works for, or on behalf of, the Council

You should not approach or pressure anyone who works for, or on behalf of, the

<sup>5</sup> If you refer to yourself as councillor, or you use a social media account in a way that identifies you as a councillor or you make comments relating to your role as a councillor, then the Code of Conduct applies.

This would be the case even if you post a 'disclaimer' to suggest that the account is a personal one

# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

Council to carry out their duties in a biased or partisan way. They must be neutral and should not be coerced or persuaded to act in a way that would undermine their neutrality.

Although you can robustly question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

## 4. Do not disclose confidential information and you must always comply with data protection principles

There will be times when you will be required to treat discussions, documents or other information relating to or held by the Council in a confidential manner, in which case you must observe such requirements for confidentiality.

Legislation also gives you certain rights to obtain information not otherwise available to the public and you are entitled to exercise these rights where the information is necessary to carry out your Council duties. Such information is, however, for your use as a councillor and must not be disclosed or in any way used for personal or party-political advantage or in such a way as to discredit the Council. This will also apply in instances where you hold the personal view that such information should be publicly available.

Personal data is confidential and is protected by the *General Data Protection Regulations* (GDPR). Never share information with family or friends or allow access to personal data disclosed to you in your role as a Councillor.

When conducting Council business, you must only use the email account provided by the Council. **Personal email addresses that you may have should never be used.**

## 5. Do not prevent anyone getting information that they are entitled to by law

You must not prevent any person from accessing information which they are

entitled to by law. This includes information under the *Freedom of Information Act*.

## 6. Do not use, or attempt to use, your position improperly to the advantage or disadvantage of yourself or anyone else

You should not use, or attempt to use, your public office either for your or anybody else's personal gain or loss. For example, your behaviour would be improper if you sought to further your own private interests through your position as a member.

## 7. Do not misuse Council resources

You should never use the Council's resources of facilities for your own private or business purposes. It is also not appropriate to use, or authorise others to use, the Council's facilities or resources for political purposes, including party political purposes. When using the authority's resources, you must have regard, if applicable, to any Local Authority Code of Publicity made under the *Local Government Act (1986)* or similar Act.

## 8. Do have regard to advice from the Monitoring Officer or S151 Chief Finance Officer

If you seek advice, or advice is offered to you, for example, on whether or not you should register an interest, you should have regard to this advice before you make your mind up.

You must also give reasons for all decisions in accordance with statutory requirements and any reasonable requirements imposed by the Council. Giving reasons for decisions is particularly important in relation to regulatory decisions and decisions where people's rights are affected.

Where you disagree with officer recommendations in making a decision, you will need to take particular care in giving clear reasons for the decision.

## INTERESTS

A failure to comply with the following provisions does not amount to a breach of the Code of Conduct but may result in a criminal offence being committed.

# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

## General Principles

The key principles of the Code, especially those which specify integrity, honesty and openness are given further practical effect by the requirement for you to declare interests at all meetings that you attend and that your attendance, even as an observer, does not give rise to any suggestion that your presence could influence the outcome of the meeting. The rules which require registration of interests, along with the rules on declaration of interest, are intended to produce transparency in regard to interests which might influence, or be thought to influence, your actions as a councillor.

## Mandatory Registration of Disclosable Pecuniary Interests

A person's pecuniary interests are their business interests (for example their employment, trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and assets including land and property). They are called "Disclosable Pecuniary Interests" (DPIs)

Regulations made by the Secretary of State describe the detail and timescale for registering DPIs.

You have a DPI if you, or your spouse or civil partner, have a pecuniary interest listed in the national rules (see Annex 1 attached).

You must, within **28 days of taking office**, notify the Monitoring Officer of any DPI where the pecuniary interest is yours, your spouse's or civil partner's, or is the pecuniary interest of somebody with whom you are living with as a husband or wife, or as if you were civil partners.

You must also, within **28 days of becoming aware of any new DPI**, or change thereto, notify the Monitoring Officer of such new or changed interest.

It is your personal responsibility to comply with these regulations, and you should review regularly and at least once a year your personal circumstances to ensure that your registration of interests is up to date.

## Criminal Sanctions

It is a criminal offence if, without a reasonable excuse, you fail to tell the Monitoring Officer about your DPIs.

It is also a criminal offence to knowingly or recklessly provide false or misleading information, or to participate in the business of the Council where that business involves a DPI.

## Gifts and Hospitality

You must not accept any offer by way of gift or hospitality which could give rise to real or substantive personal gain or a reasonable suspicion of influence on your part to show favour or disadvantage to any individual or organisation. You should also consider whether there may be any reasonable perception that any gift received by your spouse or cohabitee or by any company in which you have a controlling interest, or by a partnership of which you are a partner, can or would influence your judgement. The term "gift" includes benefits such as relief from indebtedness, loan concessions, or provision of services at a cost below that generally charged to members of the public.

You must never ask for gifts or hospitality.

You are personally responsible for all decisions connected with the acceptance of gifts or hospitality offered to you and for avoiding the risk of damage to public confidence in the Council and in local government. As a general guide, it is usually appropriate to refuse offers except:

- a) isolated gifts of a trivial character, the value of which must not exceed £25
- b) normal hospitality associated with your duties and which would reasonably be regarded as appropriate; or
- c) civic gifts received on behalf of the Council.

The receipt of these gifts must be registered with the Council within 28 days. This includes a requirement to disclose the name of the person who is believed to be the source of the gift or hospitality.

You must not accept any offer of a gift or hospitality from any individual or organisation who is an applicant awaiting a decision from the Council or who is seeking to do business or to continue to do business with the Council. If you are making a visit to



# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

inspect equipment, vehicles, land, or property that the Council is intending to purchase, then as a general rule you should ensure that the Council pays for the cost of these visits.

You must only accept offers to attend social or sporting events where these are clearly part of the life of the community or where the Council would be expected to be represented.

You must not accept repeated hospitality or repeated gifts from the same source.

If the Council seeks sponsorship for some of its activities or events, you must ensure that your involvement with the sponsors is limited to the event in question and does not damage public confidence in the relationship between the Council and the sponsors.

## OTHER MATTERS

The following do not in themselves comprise part of the Code of Conduct. However, you should be aware that a failure to act in accordance with the advice as set out below will be taken into account in any allegation that there has been a breach of the Code of Conduct.

### Conduct at Meetings

You must respect the Chairman, your colleagues, Council employees and any members of the public present during meetings of the Council, its Committees, or Sub-Committees or of any Public Bodies where you have been appointed by, or represent, the Council. You must comply with rulings from the Chairman in the conduct of the business of these meetings.

### Recording, photography and use of social media at meetings

You need to consider your role at meetings and ensure that nothing distracts or stops you from making good and effective decisions. You may record proceedings in the same way as members of the public, but if you film/record a meeting from a position that is not otherwise available to the public, you must make sure that it:

- is not disruptive, overly intrusive, or impeding good decision making

- does not, hinder or prejudice Officers and fellow Councillors from carrying out their duties or participating in the meeting.

As a registered Data Controller, you must also comply with, and demonstrate compliance with, all the data protection principles as well as the other General Data Protection Regulation (GDPR) requirements. In addition, when filming or recording a meeting, you too must comply with any Hart Safeguarding, or corporate Equality Policy and Objectives, as well as the Freedom of Information Act.

### Remuneration, Allowances and Expenses

You must comply with the rules for the payment to councillors of remuneration, allowances, and expenses.

### Appointments to Partner Organisations

You may be appointed or nominated by the Council as a member of another body or organisation. If so, you will be bound by the rules of conduct of these organisations and your responsibility for any actions taken by you as a member of such an organisation will be to the organisation in question. You must also continue to observe the rules of this Code in carrying out the duties of that body.

If you become a director of a company as a nominee of the Council, you will assume personal responsibilities under the Companies Acts. A conflict of interest may arise for you between the company and the Council. In such cases, it is your responsibility to take advice on your responsibilities to the Council and to the company. This will include questions of declarations of interest. The same applies if you assume other responsibilities such as becoming a director of a charitable trust.

### Dealings with the Council

You will inevitably have dealings on a personal level with the Council of which you are a member - for example as a Council taxpayer, tenant, or recipient of a Council service or applicant for a licence or consent granted by the Council. You must not seek preferential treatment for yourself, your family, friends, colleagues or employees

# HART DISTRICT COUNCIL MEMBERS' CODE OF CONDUCT 2020

because of your position as a councillor or as a member of a body to which you are appointed by the Council and you must avoid any action that could lead members of the public to believe that preferential treatment is being sought.

## Responsibilities to the Council as a Member of the Public

The law makes specific provision that if a councillor is in **two months** arrears with payment of Council tax that councillor may not participate in certain decisions concerning Council tax issues.

If you owe a debt to the Council, you must put in place at the earliest opportunity arrangements for repayment. You must avoid being in a situation which might lead the public to believe that preferential treatment is being sought. You must not participate in any decision that may create suspicion of a conflict of interest.

## Communications

You must be clear when communicating with the media or speaking in public, and particularly if you are using social media, that you do not give the impression you are acting in an official capacity when you are acting in a personal capacity.

Since the judgment of whether you are perceived to be acting as a councillor will be taken by someone else, it is safest to assume that any online activity can be linked to your official role.

## Training

You must attend mandatory training provided by the Council and receive, attend and consider updates when required.

## DECLARATIONS OF INTERESTS

It is your responsibility to make decisions about whether you have to declare an interest or make a judgement as to whether a declared interest prevents you from taking part in any discussions or voting. You are in the best position to assess your personal circumstances and to judge how these circumstances affect your role as a councillor about a particular matter. You can, of course, seek advice from the Monitoring Officer. In making decisions for

which you are personally responsible, you are advised to err on the side of caution.

You may feel able to state truthfully that an interest would not influence your role as a councillor in discussion or decision-making. You must, however, always comply with the *objective test* ("the objective test") which is *whether a member of the public, with knowledge of the relevant facts, would reasonably regard the interest as so significant that it is likely to prejudice your discussion or decision making in your role as a councillor.*

You must apply these principles no less scrupulously in your dealings with Council officers, at meetings with other councillors, including party group meetings, meetings of Joint Boards and Joint Committees and any other meeting, formal or informal, where you are representing the Council.

## Declaration of a DPI at a meeting of the Council

Your obligation to disclose a DPI to a meeting applies when you are aware of or ought to be aware of the existence of the DPI.

If you are present in any capacity (and this includes a private capacity) at a meeting of the Council, its executive (Cabinet), or any committee of the executive, or of any committee, sub-committee, joint committee, or joint sub-committee of the Council, and you have a DPI relating to any business that is or will be considered at the meeting, **you must declare that interest and you must not participate in:**

- any discussion of the business at the meeting, or if you become aware of your disclosable DPI during the meeting participate further in any discussion of the business, or
- any vote or further vote taken on the matter at the meeting.

If the interest is not registered, you must still disclose the interest to the meeting. 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.

These prohibitions apply to any form of participation including speaking (or even observing the meeting) as a member of the public. **You must leave the room.** You

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cannot remain in the public gallery even if only to observe any discussion or vote on the matter.

In certain circumstances, you can request from the Monitoring Officer a dispensation from these prohibitions.

### Dispensations which do not amount to DPIs

You do not have a DPI in the following circumstances:

1. Setting of Council Tax or precept or local arrangements for council tax support;
2. Housing: where you (or your spouse or partner) hold a tenancy or lease with the Council as long as the matter does not relate to your particular tenancy or lease;
3. Housing Benefit: where you (or your spouse or partner) directly receive housing benefit in relation to your own circumstances; or
4. An allowance, travelling expense, payment, or indemnity for Councillors.

### Declaration of "Other" Interests

Sometimes you may have "other" interests in a matter if that matter affects the well-being of you, members of your family, or people with whom you have a close association, more than it would affect most people in the ward affected by the decision, or in the Council's area.

An "other" interest can affect you, your family or close personal associates positively and negatively. Therefore, if you or they have the potential to gain or lose from a matter under consideration, a personal interest may need to be declared in both situations.

Your obligation to disclose an "other" interest to a meeting only applies when you are aware of or ought to be aware of the existence of the personal interest. Providing that the "other" interest does not amount to a "prejudicial" interest, you can remain in the room, participate in any discussion, and vote on the business at the meeting,

### What is so significant that it is likely to prejudice your judgement?

If a reasonable member of the public with knowledge of all the relevant facts would think that your judgement of the public interest might be prejudiced, then you have a "prejudicial" interest.

The mere existence of local knowledge or connections within the local community however, will not normally be sufficient to meet the test. There must be some factor that might positively harm your ability to judge the public interest objectively. The nature of the matter is also important, including whether a large number of people are equally affected by it or whether you or a smaller group are particularly affected.

### What you should do if you have a "prejudicial" interest

If you have a "**prejudicial**" interest in a matter being discussed at a meeting, even if you are only attending to observe the meeting from the public gallery, you must declare that you have a prejudicial interest and the nature of that interest as soon as that interest becomes apparent to you **and you must leave the room immediately. You cannot stay in the room or the public gallery.**

This Code of Conduct however, aims in certain circumstances to still provide you with the same rights as ordinary members of the public to speak on certain matters in meetings, despite having a prejudicial interest.

If an ordinary member of the public would be allowed to speak to a meeting about an item, you will be provided with the same opportunity. You will be able to make representations, answer questions, or give evidence, even if you have a prejudicial interest in the item. **You may not however, take part in the discussion.**

You must **immediately leave after** you have made your representations, given evidence, or answered questions, and before any debate starts.

If the meeting decides that you should finish speaking, despite your intention to say more, you must comply with the meeting's decision. Although members of the public may be allowed to observe the discussion



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and vote on the matter, **you are not allowed to do so and must leave the room immediately**. Failure to do so may be viewed as an attempt to **improperly influence** the meeting.

### Bias/Predetermination

While declaring interests will to some extent deal with issues of bias, there will still be areas where a formal declaration is not required under the Code of Conduct but you still need to make clear that you are not biased or predetermined going into the decision making process.

Even though you may have been scrupulously impartial, the appearance of bias can itself call into question the legitimacy of the decision making process. In general, the rule against bias looks to the appearance or risk of bias rather than bias in fact.

You are entitled to have a **predisposition** one way or another as long as you have not pre-determined the outcome. In essence, you are not taken to have had, or appeared to have had, a closed mind when making a decision just because you have previously done anything that directly or indirectly indicated what view you might take. You are able to express an opinion providing that you can show that you have come to the relevant meeting with an open mind, able to take account of all of the evidence and make your decision on the day.

However, there is still a need for anyone proposing to participate in decisions to examine their position with scrupulous care. This should be in the light of how proposed involvement is likely to be seen by critical external observers ("the objective test").

### Dual-Hatted Members

Membership of another public body gives rise to a personal interest where you are involved in discussions or decisions relating to that other public body.

You should be able however, to regard most interests arising out of membership of another public authority as being personal non-prejudicial interests, even where there are financial implications. Examples of the sort of situation where the interest may become prejudicial, and will therefore rule you out of participation in any discussions and decision-making, are:

- a) Consideration of a licensing or planning application submitted by the other authority of which you are a member;
- b) A discussion or decision where two public authorities are in dispute and where litigation is threatened or has been commenced;
- c) Where the financial implications are so significant that one authority would have to reconsider its budget.

## DISCLOSABLE PECUNIARY INTERESTS

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011. Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and it is either the 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 the 'relevant person' means you and your partner, as above)

<b>Subject</b>	<b>Prescribed description</b>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain
Sponsorship	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).
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and Hart District Council - <ul style="list-style-type: none"> <li>• under which goods or services are to be provided or works are to be executed; and</li> <li>• which has not been fully discharged.</li> </ul>
Land	Any beneficial interest in land that is within the area of Hart District Council.
Licences	Any licence (alone or jointly with others) to occupy land in the area of Hart District Council for a month or longer.
Corporate tenancies	Any tenancy where (to M's knowledge) - <ul style="list-style-type: none"> <li>• the landlord is Hart District Council; and</li> <li>• the tenant is a body in which the relevant person has a beneficial interest.</li> </ul>

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Securities	Any beneficial interest in securities of a body where - <ul style="list-style-type: none"><li>• that body (to M's knowledge) has a place of business or land in the area of Hart District Council; and</li></ul> either - <ul style="list-style-type: none"><li>• the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or</li><li>• 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.</li></ul>
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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 Hart District Council;

“member” includes a co-opted 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 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.

## STANDARDS COMMITTEE

**DATE OF MEETING: 3 NOVEMBER 2020**

**TITLE OF REPORT: GUIDANCE ON THE CODE OF CONDUCT - PUBLIC INTEREST TEST**

**Report of: Monitoring Officer**

### 1. PURPOSE OF THE REPORT

1.1 To seek Standards Committee's agreement to the public interest test as set out in Appendix 1 of this report.

### 2 RECOMMENDATION

2.1 It be recommended to Full Council that

2.1.2 the public interest test as set out in Appendix 1 be used in the consideration of allegations that a member has broken the Code of Conduct; and

2.1.3 The Hart Code of Conduct Arrangements for Dealing with Allegations be amended to include:

- **Public interest** – the decision whether to investigate will be a proportionate response to the issues raised and expected outcomes will take into account the wider public interest and the resources require to carry out an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters and in accordance with the public interest tests as set out in Appendix 1).
- **Alternative course of action** – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case.
- **Member's democratic role** – where a complaint relates to a matter more appropriately judged by the electorate at the local elections, the Monitoring Officer will not normally refer these matters for investigation.

### 3 CONTEXT

- 3.1 The role of Standards Committees is to help councillors achieve the standards of conduct that meet public expectations. It must aim to support proper decision making and the proper use of public resources and to preserve public confidence in local government and in the democratic process itself. Investigations that do not support these wider benefits is not in the public interest.
- 3.2 Because the limited resources available, and the absence of any meaningful sanctions, the Council needs to quickly filter out those complaints that are trivial or which have little or no impact on the public. It also needs to avoid engaging or carrying out investigations that are disproportionate to any outcome that can be achieved or sanction imposed.
- 3.3 It is important that everyone focuses attention on investigating matters that are serious and are capable of undermining the relationship between councillors and the public, such as corruption, bullying and misuse of power in public office. The complaint must have substance<sup>1</sup> and raise a matter of public interest. Vexatious, malicious, frivolous, or trivial complaints<sup>2</sup> should have no place in these arrangements.

#### **4 THE PUBLIC INTEREST TEST**

- 4.1 The Committee of Standards in Public Life (CSPL) recommends that Councils should publish a clear and straightforward public interest test against which allegations are filtered<sup>3</sup>. It highlights the standards bodies in Scotland, Wales and Northern Ireland which all make use of a 'public interest' test when filtering complaints. These tests set clear expectations to those making complaints and ensure consistency of approach. The tests do not need to be detailed. The CSPL for example, highlights the Northern Ireland Local Government Commissioner for Standards approach with a simple two-stage test, which asks whether they 'can' investigate the complaint, and whether they 'should'?

**Northern Ireland Local Government Commissioner for Standards public interest test<sup>4</sup>**

1. 'CAN' we investigate your complaint?
  - Is the person you are complaining about a councillor?
  - Did the conduct occur within the last six months?
  - Is the conduct something that is covered by the code?
  
2. 'SHOULD' we investigate your complaint?
  - Is there evidence which supports the complaint?

<sup>1</sup> The complaint must have something in it and be of meaningful quality.

<sup>2</sup> There is no place for complaints that are intended to cause annoyance, frustration, or worry (vexatious), intending or intended to do harm (malicious), or complaints that have little or no substance (frivolous) in terms of value or importance (i.e. trivial complaints).

<sup>3</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/777315/6.4896\\_CO\\_CSPL\\_Command\\_Paper\\_on\\_Local\\_Government\\_Standards\\_v4\\_WEB.PDF](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF)

<sup>4</sup> <https://nipso.org.uk/nilgcs/making-a-complaint/how-we-deal-with-your-complaint/>

- |   |
|---|
| <ul style="list-style-type: none"><li>• Is the conduct something which it is possible to investigate?</li><li>• Would an investigation be proportionate and in the public interest?</li></ul> |
|---|

## 5 THE PROPOSAL

5.1 Attached at Appendix 1 is a draft of a proposed statement which gives clarity to what the underlying public interest tests the Council will use to assess Code of Conduct complaints. It follows closely the approach promoted by the CSPL and reflects the Northern Ireland and Welsh example.

5.2 It is also recommended that the Hart Code of Conduct Arrangements for Dealing with Allegations<sup>5</sup> be amended to include:

- **Public interest** – the decision whether to investigate will be a proportionate response to the issues raised and expected outcomes will consider the wider public interest and the resources require to carry out an investigation. Complaints will only be investigated where the allegations are reasonably considered to be serious matters and follow the public interest tests as set out in Appendix 1).
- **Alternative course of action** – a complaint will only be investigated where there is no other action which could be taken which would achieve an appropriate outcome in the circumstances of the case.
- **Member’s democratic role** – where a complaint relates to a matter more appropriately judged by the electorate at the local elections, the Monitoring Officer will not normally refer these matters for investigation.

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Appendix 1 – PUBLIC INTEREST CONSIDERATIONS

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[https://www.hart.gov.uk/sites/default/files/4\\_The\\_Council/Councillors/Help\\_and\\_advice/Arrangements%20for%20dealing%20with%20Allegations%20draft%20February%202020%20versG.pdf](https://www.hart.gov.uk/sites/default/files/4_The_Council/Councillors/Help_and_advice/Arrangements%20for%20dealing%20with%20Allegations%20draft%20February%202020%20versG.pdf)

## PUBLIC INTEREST CONSIDERATIONS

The purpose of the Codes of Conduct is to help councillors achieve the standard of conduct which meets public expectations. The aim is to support proper decision making and the proper use of public resources. Undertaking investigations that do not support these wider benefits is not in the public interest.

The resources should not be used to investigate matters which are trivial, or which have little or no impact on the public. The decision whether to investigate will therefore, be a proportionate response to the issues raised and expected outcomes and will take into account the wider public interest and the costs of undertaking an investigation.

Complaints will only be investigated where the allegations are reasonably considered to be serious matters such as corruption, bullying and misuse of power in public office for example<sup>6</sup>. Allegations are unlikely to be investigated where the complainant has not suffered significant personal injustice as a direct result of the actions of the Councillor complained about, or where the matter complained about does not raise a significant matter of public interest.

There must also be some evidence of deliberate fault. If a councillor has made a genuine mistake despite taking reasonable care, then it is unlikely that it will be in the public interest to investigate a complaint simply because it so happened that a breach of the Code of Conduct may have occurred.

There is no widely accepted definition of the public interest but has been described as “*something which is of serious concern and benefit to the public*”. The public interest therefore relates to something which has an impact on the public and it is not merely a matter that the public find to be of interest or a matter that necessarily impacts on an individual alone (although an individual may be more directly impacted by the matter than the wider public). The public in this context does not necessarily mean the whole of Hart District. It may refer to a distinct section of the public such as a small community or interest group.

### 1. Seriousness

The more serious the alleged breach, the more likely it is that it will be investigated.

When deciding the level of seriousness of the allegation, relevant considerations are: the extent to which the councillor was at responsible for or was to blame for the alleged breach; the circumstances of the complainant; and whether the alleged conduct caused harm to any person.

#### a) To what extent was the councillor responsible for or to blame for the conduct complained of?

Questions of responsibility or blame are likely to be determined by the councillor's level of involvement; the extent to which the alleged breach

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<sup>6</sup> The application of the investigations not limited to these matters

was premeditated and/or planned; whether they have previously being investigated for a similar matter, or have been sanctioned for a previous breach; whether the conduct complained of is ongoing, repeated or has escalated; the councillor's length of service; and level of experience/ knowledge of the councillor in relation to the issue in question.

**b) What are the relevant circumstances of any person affected by the alleged breach and has the alleged breach caused harm to any person?**

In considering the seriousness of a breach, the circumstances of any person affected by the breach are relevant and must be taken into consideration.

Particular regard will be taken of whether the alleged breach was motivated by any form of discrimination against a person's ethnic or national origin, gender, disability, age, religion or belief, sexual orientation or gender identity; or the councillor showed hostility towards a person based on any of those characteristics. In deciding whether an investigation is required in the public interest, the views expressed by the complainant, about the impact the alleged breach has had on them will be considered.

## **2. Proportionality**

Account must always be taken of the resource implications any investigation and any adjudication, especially where it could be regarded as excessive when weighed against any likely sanction. No decision on the public interest will be taken based on resource alone, but it is a relevant consideration when making an overall assessment.

These considerations will help in identifying the public interest, but they are not exhaustive and not all are relevant in each case. In any event, consideration of the public interest is only one criterion that must be met in deciding whether to investigate a complaint: crucially the complaint must also be supported by evidence of a breach of the Code.