

Report of the Monitoring Officer

1. Summary

This report considers potential amendments to the Borough Council's Code of Conduct and recommends that revisions be drafted, incorporating the changes considered in this report and then circulated to stakeholders for comment, with responses reported to this committee.

2. Recommendation

It is RECOMMENDED that:

- a) the Committee consider the issues raised in this report and comment upon them at the meeting;
- b) revisions to the Code of Conduct be drafted to cover the areas considered in this report, and any others raised by the Committee, and a revised draft Code be circulated, for comment, to Borough Councillors, and parish and town councils in the Borough;
- c) responses to the consultation exercise be reported back to this Committee.

3. Reasons for recommendations:

Under section 37 of the Local Government Act 2000 the Borough Council has a duty to keep the Code of Conduct up to date and under section 28 of the Localism Act 2011 the Code should contain such provisions as the Council considers appropriate in respect of the registration in its register, and disclosure, of pecuniary interests and interests other than pecuniary interests. Most town and parish councils in the Borough adopt the wording of the Borough Council's Code for their own use and, so, are significant stakeholders in any exercise to revise the Code.

4. Supporting Evidence

- 4.1 At the last meeting of the Committee it was agreed that a report on potential revisions to the Borough Council's Code of Conduct for Councillors would be brought to this meeting. Originally, it was intended that revising the Code of Conduct would form part of the work of the Task and Finish Group on the Constitution but that Group were concerned that the work could delay the delivery of the main project to review the Constitution and were content to run

with the current Code, for the time being, as a component of the revised Constitution. This was sensible as the Council needs to move to a position where the Constitution is updated on an ongoing basis, to meet both internally and externally imposed change. Revising the Code of Conduct will involve more stakeholders than other parts of the Constitution, given the need to involve this Committee, the Corporate Governance Group, full Council and the Town and Parish Councils (most of them adopt the Borough Council's Code for their own use) and, of course individual Borough Councillors who are affected by its provisions.

- 4.2** The Borough Council's current Code is set out as Appendix 1. In line with many Codes adopted shortly after the new standards regime was introduced under the Localism Act 2011, it is very brief, being a minimalist adoption of the Nolan principles together with the inclusion of the, then, new requirements for registering Disclosable Pecuniary Interests and not participating in items of Council business relating to them.
- 4.3** Experience of working with the Code, largely at Town and Parish level, suggests that, in principle, a reversion to the style of drafting used in the pre-Localism Act national model code may provide greater clarity, for Councillors, their clerks and the public, through both giving more specific requirements in respect of the more common types of code breaches, thereby "fleshing out" the broad brush approach of the Nolan principles but also dealing with the registering and disclosure requirements for "interests other than pecuniary interests" contained within section 28 of the Localism Act 2011. These are interests other than the very narrowly defined Disclosable Pecuniary Interests which are still capable of impacting on the councillor's proper judgement when taking decisions in the public interest. The Borough Council's Code makes no reference to such interests and this is a shortcoming within its local arrangements which should be corrected, irrespective of what view is taken on whether to make other changes.
- 4.4** Appendices 2 and 3 are copies of the Codes of Conduct for Gedling Borough Council and Nottingham City Council respectively. They illustrate the points made above, by applying the Nolan principles but, also, retaining material from the former national code to deal with specific and common forms of Code breach whilst also dealing with "interests other than pecuniary interests", essentially by applying similar provisions to the "personal interest" and "personal and prejudicial interest" formulae from the former national code, to deal with interests which a sensible member of the public is likely to think are capable of improperly influencing a councillor's judgement. In addition, these codes expressly incorporate provisions relating to gifts and hospitality. Rushcliffe has a separate protocol on gifts and hospitality but there is no express cross reference in the actual Code requiring adherence to it so breach of the protocol is not, in itself, directly a code breach (although a breach of the general "Nolan" principles would be argued).
- 4.5** There is also a similar lack of cross reference between the current Code and the Protocol on Councillor/Officer relations and the Guidance on Planning Application Procedures and revisions could make the relevant cross

references so that significant failures to comply with the current versions of such guidance could also amount to a breach of the Code.

- 4.6** A presentation was given to workshops at the Town and Parish Forum on issues with the Code and potential revisions to it and Appendix 4 contains material relevant to this. There was support, in broad terms, for a revision exercise, with Clerks, in particular, showing support for more detail in the Code on unacceptable conduct. Content in the code on improper use of e-media was also suggested and this reflects a growing trend in Code complaints about Councillors' use of social media, so it is worth considering drafting an express provision covering this.

5. Risk and Uncertainties

The key risk is achieving consensus between the various stakeholders but the Forum workshop sessions give a good degree of confidence that this can be achieved but, ultimately, it is a matter of choice for each Council as to the content of their Code.

6. Implications

6.1 Finance

It is intended that existing staff resources be used to deliver these proposals,

6.2 Legal

The legal background is covered in section 3 above

6.3 Corporate Priorities

Up to date constitutional documents will be a positive support to the delivery of objectives by all the Councils involved.

For more information contact:	Glen O'Connell Monitoring Officer GOConnell@rushcliffe.gov.uk
Background papers Available for Inspection:	None
List of appendices (if any):	Appendix 1 – Rushcliffe Borough Council Code of Conduct Appendix 2 – Gedling Borough Council code of conduct Appendix 3 – Nottingham City Council Code of conduct Appendix 4 – Material from Town and Parish Forum