

SC 54/23

NEW FOREST NATIONAL PARK AUTHORITY

STANDARDS COMMITTEE MEETING – 6 July 2023

Review of Member Code of Conduct, Member Complaint Process and Local Protocols

Report by Rosalind Alderman, Solicitor and Monitoring Officer

1 Introduction

- 1.1 Section 27 of the Localism Act 2011 (the 'Act') requires the NPA to promote and maintain high standards of conduct by its members, and to adopt a Code of Conduct that must be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 1.2 The NPA's Code of Conduct (the 'Code') was last reviewed and adopted by the NPA in July 2020. This paper asks the Committee to consider suggested revisions to the NPA's Code (attached with changes marked as **Annex 1** and in clean copy as **Annex 2**) and to make an onward recommendation to the full Authority for its adoption. A summary of the substantive changes that are suggested is set out below.
- 1.3 The Committee is also asked to consider suggested revisions to the Member Complaints Process (attached with changes marked as **Annex 3** and in clean copy as **Annex 4**) and the Protocol for Member and Officer Relations and protocol for Members and Officers dealing with Planning Matters (**Annexes 5 and 6**).
- 1.4 Together, these documents form a key part of the NPA's governance framework, and it is important to keep them under regular review.

2 Overview of key suggested amendments to the Code of Conduct

- 2.1 In 2019, the Committee on Standards in Public Life ('CSPL') issued a review of standards in local government including 26 recommendations and 16 best practice guidance points. The review resulted in the production of a model code of conduct by the Local Government Association (the 'LGA'). In 2022 the Department for Levelling Up, Housing and Communities ('DLUHC') responded to the CSPL report, but few legislative changes are expected in response, as further outlined below.
- 2.2 This report suggests a number of changes to the Code for members' consideration. A number of these changes are, where considered appropriate, based on the CSPL review's recommendations and the LGA model code, bearing in mind DLUHC's response. The proposed revised Code also incorporates some minor revisions in line with the Cabinet Office's 'Code of Conduct for Board Members of Public Bodies' (the 'Cabinet Office Code'), which itself applies directly to Secretary of State appointed members. These background documents are linked at the end of this report. The revised draft also incorporates amendments based on existing practice and experience.

2.3 Registration and disclosure of interests

As members will know, there are two types of interests covered by the existing Code: the statutory Disclosable Pecuniary Interests (DPIs), and the other interests captured by Part 2B of the Code, which includes ‘public service’ interests and personal interests. The Code contains requirements for the registration and disclosure of both DPIs and other types of interest, as well as setting out when a Part 2B interest will amount to being prejudicial.

The Authority’s Code has been amended to clarify that where an interest amounts to a DPI it will not also be caught by Part 2B of the Code, and also to indicate that Part 2B interests will not arise where any inhabitant of the National Park would be similarly affected by the outcome of the decision in question. Additionally, some guidance has been incorporated as to when a Part 2B interest will amount to a prejudicial interest. Part 2B has also been amended to conform with the 28 day time limit on declarations of DPIs, which is in line with the LGA model code.

With regard to DPIs, Recommendation 5 of the CSPL review called for The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (the ‘DPI Regulations’) to be amended to include unpaid directorships, trusteeships, management roles in a charity or a body of a public nature, and membership of any organisations that seek to influence opinion or public policy, and the LGA model code also includes provisions relating to these public service interests. Notwithstanding that DLUHC is not currently pursuing any change to the DPI Regulations in accordance with this recommendation and the model code, in its response it confirms that ‘Unpaid roles may need to be declared if it is relevant to council business, and councillors should recuse themselves if necessary if discussions relate to private bodies, they are involved in.’ Members will be aware that the NPA’s Code already covers these types of interests in its existing Part 2B, at paragraph 1, in any event, and therefore no change is currently proposed in this regard.

Recommendation 7 of the CSPL review calls for section 31 of the Act (which deals with DPI declarations at meetings) to be repealed and replaced with a mandatory inclusion in the Code to the effect that a member must not participate in a discussion or vote in a matter to be considered at a meeting if they have any interest, whether registered or not, that ‘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 consideration or decision-making in relation to that matter’. The underlying reasons for the CSPL recommendation are that (i) the wording of the Act is considered ambiguous because it does not specify how closely related an interest must be to the matter under consideration, and (ii) the current declaration and withdrawal requirements are too narrow because a member would not need to declare or recuse themselves where a close family member or associate was affected by a decision. CSPL therefore calls for the objective test set out above. However, DLUHC did not support this recommendation and Section 31 of the Act remains extant. No changes to the Authority’s Code are therefore proposed in this regard. It should be noted that Part 2B of the existing Code widens the scope of declarable interests beyond the statutory DPIs and closely reflects the CSPL test for whether those interests are prejudicial, meeting the second of CSPL’s concerns outlined above. As to the first concern, members will need to continue to consider the relevant facts carefully and take advice where necessary.

2.4 Acting in an official capacity – Recommendations 3 and 4 of the CSPL report

Section 27(2) of the Act provides that: “...a relevant authority must, in particular, adopt a code dealing with the conduct that is expected of members [...] of the authority when they are acting in that capacity” [emphasis added]. The CSPL review stopped short of calling for a change in the law to the effect that all behaviour – including behaviour in a private capacity – that might call an authority into disrepute should be subject to its code of conduct. As matters stand, therefore, the Code does not and cannot apply to members acting in their personal/ private capacity, rather than as members of the NPA, because that would not be lawful.

In practice, it can sometimes be difficult to draw the distinction between actions taken in public and private capacities. Accordingly, the CSPL review calls for the scope of codes of conduct to be widened, with a rebuttable presumption that a member’s public behaviour, including comments made on publicly accessible social media, is carried out in their official capacity. This would require amendments to the Act, which DLUHC is not inclined to pursue at this time, stating that ‘It is important to recognise that there is a boundary between an elected representative’s public life and their private or personal life. Automatically presuming (irrespective of the context and circumstances) that any comment is in an official capacity risks conflating the two.’ In line with this, members should recollect that there is a (qualified) right to freedom of expression under Article 10 of the European Convention on Human Rights, and as a general principle codes of conduct should not be so far reaching in their effects as to interfere inappropriately with this. In the light of the above, no changes to the Code along these lines are suggested at this time.

The LGA’s model code does bring the notion of bringing an authority into disrepute back into the frame and it is suggested that this is incorporated in Part 1 of the Code. It should be noted, as above, that this does not extend to actions taken in a private capacity.

2.5 Other amendments

A small number of other amendments and the reordering of clauses are suggested for clarity, including:

- the summary of the seven principles of public life has been expanded;
- the general obligations set out in Part 1 of the Code have been amended and substantially broadened, both to comply more closely with the Cabinet Office Code, and to include those aspects of the LGA model code that are considered appropriate;
- the prohibition of bullying and harassment has been strengthened in line with the Cabinet Office Code, and in accordance with CSPL’s suggested best practice includes definitions and examples of these types of conduct; and
- gifts and hospitality are now explicitly included as registrable and disclosable interests under Part 2B of the Code, in accordance with Recommendation 6 of the CSPL review, the LGA model code, and DLUHC’s response to the CSPL.

3 Overview of key revisions to the Member Complaints Process (Arrangements for dealing with allegations)

3.1 Under Section 28(6) of the Act, the NPA is required to have in place arrangements under which allegations of breaches of the Code can be investigated and decisions made. It is important that the public have confidence in the Authority's decision-making process and can raise any concerns that they may have, and for those concerns to be investigated in a fair and transparent manner. However, the Authority has limited resources and has a duty to ensure that public funds are used properly, and therefore the circumstances under which a complaint may be discontinued prior to the substantive investigation process have been clarified (paragraph 2.1 of **Annex 3**).

3.2 Sanctions

Recommendation 18 of the CSPL review called for breaches of the rules on disclosable pecuniary interests ('DPIs') to be decriminalised, and for stronger local sanctions for these and other breaches of an authority's code of conduct, including giving authorities power to suspend councillors without allowances for up to six months (Recommendation 16), together with a right of appeal to the Local Government and Social Care Ombudsman ('LGSCO').¹ However, the Government's view is that these changes would have the effect of reinstating the previous Standards Board regime, which, in DLUHC's view, 'allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government.' The response also states that criminal sanctions in respect of failures to declare DPIs remain a 'necessary and proportionate safeguard and deterrent against corruption' and so these will remain for now.

The available sanctions for established breaches therefore remain largely unchanged in the revised draft Member Complaints Process, and do not include suspension or disqualification, although a request for apology from or for training to be undertaken by the member in question has been added. Under the current legislation, there is of course no means of enforcing any action required to be taken.

3.3 Independent Persons

As members will know, section 28 of the Act requires the NPA to appoint at least one independent person whose views are sought and taken into account prior to decisions on allegations, and whose views may also be sought by a member who is the subject of a complaint. The CSPL review called for a strengthening of this role, but at this time DLUHC does not intend to take these provisions forwards. However, a number of the criteria the CSPL suggests (such as appointing two IPs and where appropriate including a summary of their views in decisions) are included in the attached draft and/or were already done in practice.

¹ Members should note that currently, the LGSCO can investigate an authority's decision-making process in undertaking a standards investigation or imposing a sanction on grounds of maladministration where there is some evidence of injustice (such as unreasonable delay or conflict of interest), but cannot adjudicate on the substantive question of whether a breach actually took place and what would be the appropriate sanction, and so there is no right of appeal as such to the LGSCO at present.

3.4 Voluntary standing down during investigation of alleged breach

The Committee may wish to consider whether or not to incorporate a provision in the Member Complaints Process to the effect that, in exceptional circumstances and following consultation with the Monitoring Officer, a member may be informally invited not to attend meetings of the Authority and its Committees where a complaint against that member has been referred to a hearing (pursuant to paragraph 5.1 of the Member Complaints Process) pending the outcome of that process. This course of action is problematic in that it could give rise to allegations of bullying and undue influence or predetermination of the outcome of the complaints process, and possibly even to legal challenge. Moreover, there would be no way of enforcing that member's absence from the NPA's business because, as noted above, the Authority has no power to impose a suspension. It has not therefore been included in the attached draft, but should the Committee wish to recommend to the Authority the inclusion of such a provision, authority would need to be delegated to the Monitoring Officer to draft it.

3.5 Other amendments

A clause has been included in the draft enabling the MO to ask the DMO to investigate a matter for any reason, rather than being limited to when he or she has had previous involvement in that matter.

4 **Local Protocols**

4.1 No substantive changes to the Protocol for Member and Officer Relations and the Protocol for Members and Officers Dealing with Planning Matters are considered necessary at this time, as they are compatible with the suggested revisions to the Code. However, a few minor amendments have been made as shown on the attached **Annexes 5 and 6**, predominantly to bring them into line with the NPA's house style. The Committee is requested to review the Protocols and consider whether they remain fit for purpose.

5 **Conclusion**

- 5.1 In summary, the Committee is asked to consider and if thought fit recommend to the full Authority for adoption the revised Code, the Member Complaints Process, and the two Local Protocols, subject to any amendments agreed at the meeting.
- 5.2 Once a revised Code is adopted by the NPA it must, in accordance with section 28 of the Act, publicise it in such manner as it considers is likely to bring it to the attention of people living in the National Park.

6 **Recommendation**

That:

- 1. The Committee considers the revised drafts of the Code of Conduct, the Member Complaints Process, and the Protocol for Member and Officer Relations; and**

2. The Committee recommends to the Authority that the revised Code of Conduct, Member Complaints Process, the Protocol for Member and Officer Relations, and the Protocol for Members and Officers Dealing with Planning Matters, attached as Annex 2, Annex 4, Annex 5 and Annex 6 respectively to this report, be adopted, subject to any amendments agreed at the meeting pursuant to recommendation (1) above.

Papers: **Annex 1 – Code of Conduct (changes tracked)**
 Annex 2 – Code of Conduct (clean copy)
 Annex 3 – Member Complaints process (changes tracked)
 Annex 4 – Member Complaints process (clean copy)
 Annex 5 – Protocol for Member and Officer Relations

Background: **CSPL review:** [Local government ethical standards: report - GOV.UK](https://www.gov.uk/government/reports/other/local-government-ethical-standards-report)
 (www.gov.uk)
 LGA Model Code of Conduct:
 [https://www.local.gov.uk/publications/local-government-association-](https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020)
 [model-councillor-code-conduct-2020](https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020)
 Cabinet Office Code of Conduct: [Code of conduct for board members](https://www.gov.uk/government/publications/code-of-conduct-for-board-members-of-public-bodies)
 [of public bodies - GOV.UK](https://www.gov.uk/government/publications/code-of-conduct-for-board-members-of-public-bodies) (www.gov.uk)
 DLUHC response to CSPL review: [Local government ethical standards:](https://www.gov.uk/government/reports/other/local-government-ethical-standards-report)
 [government response to the Committee on Standards in Public Life](https://www.gov.uk/government/reports/other/local-government-ethical-standards-report)
 [report - GOV.UK](https://www.gov.uk/government/reports/other/local-government-ethical-standards-report) (www.gov.uk)