

Audit and Risk Committee

21 July 2020

Agenda item number 9

Draft Model Member Code of Conduct

Report by Monitoring Officer

Summary

To consider a consultation by the Local Government Association (LGA) on their draft Model Member Code of Conduct

Recommendation

That, having considered this report, and the draft Model Member Code of Conduct (the Model Code) published by the LGA, this Committee considers if it wishes to comment on it, and if so, these comments be submitted to the LGA before the consultation closes on 17 August 2020.

1. Introduction

- 1.1. As part of the Localism Agenda, the Government made changes to the standards regime for local authorities, including the Broads Authority (BA), when they introduced the Localism Act in 2011 (the Act). Under s27 of the Act, the BA has a duty to promote and maintain high standards of conduct by its Members. The Act also said that each authority had to have a Code of Conduct, but it was at each authority's discretion as to the contents. The BA has its own Code of Conduct (the Code) which can be found at Appendix 1.
- 1.2. The Code must cover the registration of pecuniary interests, the role of an 'independent person', and sanctions to be imposed on any Members who breach the Code. Under the Act, these sanctions cannot include suspension or disqualification from office, for example, but may include censuring the Member found to be in breach, or requesting that they undertake training, mediation, or issue an apology for their behaviour. Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence under the Act.
- 1.3. The Committee on Standards in Public Life (CSPL) reviewed ethical standards in local government in 2018/19. The CSPL produced a report on their review, in January 2019, which made 26 recommendations to Government. The first recommendation was that the LGA should produce a draft, national, model code of conduct (the Model Code). A

link to the CSPL report and recommendations can be found here:

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

- 1.4. To date, due to Brexit and now, the COVID-19 pandemic, the Government has not responded to the CSPL's report. Meanwhile, the LGA was committed to producing the Model Code, as recommended by the CSPL's report.
- 1.5. The LGA have now published the Model Code and are consulting on it, from 8 June 2020 to 17 August 2020. They have produced a questionnaire for Members and Officers to respond to, about the Model Code.
- 1.6. The Audit and Risk Committee (ARC) has in its terms of reference; "To review and assess the policies, procedures, and practices established by the Broads Authority to monitor conformance with its code of conduct and ethical policies and provide oversight of the mechanisms established by management to establish and maintain ethical standards". Given the ARC's responsibility to monitor conformance with the Code, and to provide oversight of the mechanisms to establish and maintain ethical standards, it would seem relevant for the ARC to consider the Model Code and to comment on it, if Members wish. The Model Code can be found at this link:
<http://www.local.gov.uk/sites/default/files/documents/LGA%20Model%20Member%20Code%20of%20Conduct.pdf>
- 1.7. The purpose of the Model Code is to assist Members in setting the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken. It is also to protect Members, the public, fellow Members, the BA's Officers and the reputation of local authorities, generally. The overarching aim is to create and maintain public confidence in the role of Members and local authorities.
- 1.8. To produce the Model Code, the LGA held an event on Civility in Public Life with a range of stakeholders at the end of last year and three consultation workshops at the beginning of this year. They engaged consultants to examine examples of good practice, both in local government and other professions, and to draft the Model Code.
- 1.9. The LGA intend to create additional guidance, working examples and explanatory text, to go with the Model Code. Note that some of the changes proposed in the Model Code will require a change to the Act. For example, it is not possible under the Act to impose sanctions on those found to have breached their code of conduct. For sanctions to be imposed, such as suspension from office for those found in breach, the Act will need to be changed.
- 1.10. A short summary of what is in the Model Code is set out in this report. There is an online consultation questionnaire for both Members and Officers to complete. It consists of 17 questions about the Model Code. The LGA are also happy to receive

written responses from authorities or stakeholder groups via email at ModelCode@local.gov.uk

- 1.11. This email address can also be used if there are any questions regarding the consultation and the Model Code. Details about the consultation can be found here: <http://www.local.gov.uk/code-conduct-consultation-2020>
- 1.12. The LGA will also be holding a number of webinars on the Model Code, on 29 July, 30 July and 5 August. The details of these webinars are on the LGA's events page on their website. The feedback from the consultation will help the LGA develop a final draft, which will be reviewed by the LGA's Executive Advisory Board before being presented to the next LGA General Assembly, which they hope will be held in the Autumn of 2020.
- 1.13. The ARC is asked to comment on the Model Code. The comments made on the Model Code can be submitted to the LGA. Please note that Members can also make individual responses, directly to the LGA, via the questionnaire or the email address-see the links above.
- 1.14. The main differences between the Code and the Model Code is that, firstly, the Model Code marks a return to a national code which all authorities would be bound by. A national code gives consistency and certainty, in terms of standards of behaviour for all Members. Once finalised, it could be adopted in whole, or part, by the BA, or not at all.
- 1.15. The Code applies when Members carry out BA business. It does not apply to actions or behaviour carried out when a person is acting in an individual, private capacity. The Model Code would apply when Members are acting or claiming or giving the impression that they are acting in public or in their capacity as a Member or representative of their authority. It also applies to all forms of Members' communications or interactions, including written, verbal, non-verbal, electronic and via social media, including where Members could be deemed to be representing their authority or if there are potential implications for the authority's reputation. So, the application of the Model Code is wider than the Code. It provides clarity and certainty in terms of social media. It is often uncertain, under the Code, whether or not a Member is posting in that capacity, or as a private individual. Given new ways of working, such as having remote meetings, and the increased use of electronic communications, particularly during the COVID-19 pandemic, the LGA is interested to know if the Model Code's wider ambit is helpful.
- 1.16. As with the Code, the Model Code has been developed in line with the seven principles of public life, which are Integrity, Selflessness, Openness, Honesty, Accountability, Leadership and Objectivity. It also has some "Expectations" about "Model Member Conduct", setting out guidelines as to how Members should behave. The Expectations are that Members should;
 - act with integrity and honesty
 - act lawfully
 - treat all persons with civility; and

- lead by example and act in a way that secures public confidence
- 1.17. Also, it is expected that, in undertaking their role, they will:
- impartially exercise their responsibilities in the interests of the local community
 - not improperly seek to confer an advantage, or disadvantage, on any person
 - avoid conflicts of interest
 - exercise reasonable care and diligence; and
 - ensure that public resources are used prudently and in the public interest
- 1.18. There are 12 specific obligations of general conduct which set out the minimum requirements of Member conduct. Guidance is included to help explain the reasons for the obligations and how they should be followed. These obligations must be observed in all situations where Members act or claim or give the impression that they are acting as a Member or in public, including representing their authority on official business and when using social media.
- 1.19. The Model Code focusses on the idea of showing “civility”, or politeness and courtesy. Under Obligation 1, civility should be shown to other Members and members of the public. Under Obligation 2, employees of the BA, employees and representatives of partner organisations, and those volunteering for the BA should be treated with civility and respect for the roles which they play. What amounts to civility or respect can be dependent on the facts and requires a subjective judgement to decide. It is suggested, however, that criticising ideas and opinions is acceptable, but making personal or abusive comment would be showing a lack of civility.
- 1.20. The Code and the Model Code are very similar, in relation to the Specific Obligations in the Model Code numbered 3-10. Included are Obligations not to bully or harass others, not to compromise the impartiality of Officers, not to disclose confidential information, not to bring the BA into disrepute, not to use one’s position as a Member improperly to gain advantage/disadvantage for oneself, and not to misuse the authority’s resources.
- 1.21. However, the Model Code says that Members should not accept “significant” gifts or hospitality which they are offered from those looking to do business with the BA, or those submitting applications for licenses, consents or permissions. The word “significant” is not defined in the Model Code, but this outright prohibition is new. However, the threshold for Members having to declare the receipt of gifts and hospitality remains at £25, a figure which was in the pre-2012 former national model code of conduct.
- 1.22. Also, in terms of the declaration of interests, currently, under the Act, Members have to declare their own disclosable pecuniary interests (DPIs) and those of their spouse or partner. The requirement to declare DPIs is set out in the Act. The LGA have proposed that Members would need to declare their DPIs and those of “family members and associates”. A change to the legislation would be required to allow for this wider

application. However, it is the case that if Members are considering planning applications, for example, submitted by family members other than their spouse or partner, strictly, they do not have a DPI in that item of business. Yet, clearly, they have a conflict of interest and would be likely to be advised not to take part in that item of business. The widening of the definition of DPIs would mark a return to the wording which was found in the pre-2012, national code.

2. Financial implications

- 2.1. The Model Code is a draft document that is being consulted on at the moment. There are no direct costs associated with this consultation exercise for the BA.

3. Conclusion

- 3.1. The BA has a duty to promote and maintain high standards of behaviour and conduct. The BA's Code is a key standard in the authority's ethical framework. If the Model Code is finalised, it might be something which the BA would want to adopt, in whole, or in part. With this in mind, it would seem appropriate and expected, therefore, that the BA might wish to comment on a national consultation, and to have a say on what the Model Code might consist of.

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Background papers: Local Government Association Model Member Code of Conduct

[Broads Plan](#) objectives: Good governance underpins all of the objectives

Appendix 1 – Broads Authority Code of Conduct for Members



Code of Conduct for Members and Complaints Procedure

November 2018

Version 2.2

Updated 23.11.18

| Index | Page |
|--|-------------|
| 1. Introduction and overview | 3 |
| 2. Principles of Conduct and Core Values | 5 |
| 3. Registering and declaring disclosable pecuniary and other non-pecuniary registrable interests and gifts | 8 |
| 4. Complaints Procedure | 10 |
| 5. Local Resolution Procedure | 14 |
| 6. Hearings Procedure | 16 |
| Appendix 1 Members' Code of Conduct Complaint Form | 18 |
| Appendix 1a Code of Conduct Complaint Monitoring Form | 24 |
| Appendix 2 Criteria for consideration of complaint | 26 |
| Appendix 3 Criteria for determining frivolous or vexatious complaints | 27 |

Introduction and Overview

- 1.1 This revised Code of Conduct for Members (“the Code”) adopted on 30th September 2016 sets out the conduct which is expected of members and co-opted members (“Members”) of the Broads Authority (“the Authority”) when they are acting in that capacity, as required by section 27 of the Localism Act 2011.
- 1.2 The Nolan Report set out the seven Principles of Public Life, which are incorporated into the Code as required by section 28 Localism Act 2011. The Authority also has a statutory duty under section 27 of the Act to promote and maintain high standards of ethics and conduct by its Members.
- 1.3 Members will be offered training on the Code whether by the Monitoring Officer or from a representative body and the Authority expects all Members to take advantage of such training, including refresher courses, to ensure that they are fully aware of the provisions of the Code and the standards expected of them in public.
- 1.4 Members are also urged to avail themselves of the Local Resolution Procedure under the Code for dealing with Member versus Member complaints and other disagreements and to ensure the effective use of the Authority’s resources. The aim of Local Resolution is to resolve matters at an early stage so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the Authority and the Authority’s reputation.
- 1.5 The following pages set out the Code and guidance and it is intended to be consistent with the seven principles. It is also not an exhaustive list of all legal obligations, which fall upon Members and does not discharge members from their duty to ensure that at all times they act within the seven principles attached to the Code. The Authority also has its core values, which Members are asked to observe and follow. These are set out in section 2.
- 1.6 Members must ensure that they take appropriate action in relation to any Disclosable Pecuniary Interest. Failure to do so may result in a criminal conviction and a fine of up to £5,000 and/or disqualification from office for a period of up to 5 years.
- 1.7 Members should comply with the Code whenever they are acting in their official capacity as a Member including at full meetings, committee meetings and sub-committee meetings. The Code also applies to Members’ dealings with each other, with outside bodies, briefing meetings with officers, site visits, use of social media and in communication with the Authority, other than in a private capacity.
- 1.8 Freedom of expression is a right, which applies to all Members of the Authority. A Member’s freedom of expression attracts enhanced protection where the comments are political in nature. The criticism of opposing ideas

and opinion is considered to be part of democratic debate and it is unlikely that such comments would amount to a breach of the Code. Comments that breach the principle in paragraph 2.8 below may, in contrast, be a potential breach of the Code.

- 1.9 Members' attention is drawn to the Protocol on Member and Officer Relations in the Broads Authority, which sets out expectations of Members' conduct towards staff. The Authority has a Staff Code of Conduct for its staff which includes guidance on staff relations with Members, including on social media.
- 1.10 Members' attention is also drawn to the Authority's Standing Orders, which includes guidance on conduct within meetings of the Authority and its committees, including sanctions for disorderly conduct by Members within such meetings.
- 1.11 The Authority adopted in July 2017 Social Media Guidance for Members and Officers ¹.

2 Principles of Conduct and Core Values

Principles of Conduct

2.1 The Code promotes the highest standards of ethics and conduct and draws upon the Nolan principles of conduct as follows:

2.2 **Selflessness**

Members must act solely in the public interest. They must never use their position as Members improperly to confer an advantage on, or to avoid a disadvantage for, themselves or improperly to confer an advantage or disadvantage on others.

2.3 **Integrity and propriety**

Members must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. Members should not act or take decisions in order to gain financial or other material benefits for themselves, their families or friends. Members must declare and resolve any interests and relationships.

Note: Members should avoid putting Authority staff in breach of their own Code of Conduct, such as adding them as friends on social media platforms such as “Facebook”. Members should familiarise themselves with the Protocol on Member and Officer Relations in the Authority.

2.4 **Objectivity in decision making**

In carrying out their responsibilities including making appointments, awarding contracts, or recommending individuals for rewards or benefits, Members must make decisions on merit. Whilst Members must have regard to the professional advice of officers and may properly take account of the views of others, it is their responsibility to decide what view to take and, if appropriate how to vote on any issue.

2.5 **Accountability**

Members are accountable to the public generally for their actions and for the way they carry out their responsibilities as a Member. They must be prepared to submit themselves to such public scrutiny as is appropriate to their responsibilities.

2.6 **Openness**

Members must be as open as possible about all their actions and those of the Authority. They must seek to ensure that disclosure of information is restricted only in accordance with the law. Members should be transparent through being prepared to give reasons for their decisions and actions.

2.7 **Honesty**

Members must declare any private interests relevant to their public duties and take steps to resolve any conflict in a way that protects the public interest. Interests must be registered and declared in a manner which conforms to the procedures set out below.

2.8 Leadership

Members must promote and support these principles by leadership and example so as to promote public confidence in their role and in the Authority. They must respect the impartiality and integrity of the Authority's statutory officers and its other employees. Members should be willing to support the Code and willing to challenge poor behaviour whenever it occurs.

Note: The Protocol on Member and Officer Relations section 3 provides that officers can expect from Members leadership and that they take responsibilities for decisions made by the Authority and for defending them publicly.

2.9 Stewardship

In discharging their duties and responsibilities, Members must ensure that the Authority's resources are used both lawfully and prudently. They must ensure that the Authority's resources are not used improperly for political purposes (which include any party political purposes). Expenses must be claimed in accordance with the Authority's guidance and supported by receipts, and claimed reasonably promptly.

2.10 Confidentiality

Members must not disclose any information given to them which should reasonably be regarded to be of a confidential nature, including items discussed in the confidential sections of meetings. This duty of non-disclosure may no longer apply where either the consent of the person authorised to give it has been obtained, or there is a legal requirement to disclose. If in doubt, Members are encouraged to seek the views of the Monitoring Officer.

Note: The Protocol on Member and Officer Relations in the Broads Authority section 8 on Disclosure of Information by Members sets out the procedure in relation to disclosure of confidential information, which involves 72 hours prior notification in advance to the Chief Executive or Monitoring Officer. The Information Commissioner has issued helpful guidance on the Freedom of Information Act and General Data Protection Act which is available on the ICO website www.ico.gov.uk or by calling 0303 123 1113.

2.11 Equality and respect

Members must treat others with respect and promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their sex, race, age, religion, gender, sexual orientation or disability. Members should respect the impartiality and integrity of the Authority's statutory officers and its other employees.

Note: The Protocol on Member and Officer Relations sets out in detail the roles and responsibilities and the working relationships between Members and officers. Section 3 sets out expectations that each can expect from the other respect and courtesy and the highest standards of integrity.

Core Values

- 2.12 In addition to the principles of conduct, Members should, so far as possible, reflect the Authority's Core Values, which have been drawn up by the Authority's staff and adopted by the Authority:
- 2.13 **Commitment** – We are committed to making a difference to the Broads for the benefit of all and we will have the courage of our convictions when faced with difficult decisions.
- 2.14 **Caring** – We are considerate and respectful of each other, working together to provide the best service we can.
- 2.15 **Open and honest** – We are open, honest and inclusive in our communication and in making decisions. We are approachable and available, reaching out to all groups.
- 2.16 **Sustainable** – We take the long-term view, are passionate about our environment and its ability to provide for a vibrant local economy and the well-being of local people.
- 2.17 **Exemplary** – We strive for excellence in all we do. We are ambitious, innovative and lead by example

3 Registering and declaring disclosable pecuniary and other non-pecuniary registrable interests and gifts

- 3.1 A Member must within 28 days of taking office as a Member notify the Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State. This applies whether that interest is their own, their spouse's or civil partner's, or is the interest of someone with whom they are living with as a husband or wife, or as if they were civil partners. The interest will be included in the Authority's register of interests (a copy of which is available for public inspection and published on its web site).
- 3.2 In addition to 3.1, Members must within 28 days of taking office as a Member notify the Monitoring Officer of any disclosable pecuniary or non-pecuniary interest which the Authority has decided should be included in the register.
- 3.3 If an interest above has not been notified or entered in the register, then the Member must disclose the interest to any meeting of the Authority at which they are present, where they have disclosable interest in any matter being considered and where the matter is not a "sensitive interest" as described in the Localism Act 2011. In relation to sensitive interests, which include any concern that disclosure might lead to the Member being subject to violence or intimidation, Members should speak to the Monitoring Officer, who may agree to exclude details from any publicly available version of the register of interests.
- 3.4 Following disclosure of an interest not on the Authority's register or the subject of pending notification, Members must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.
- 3.5 Unless dispensation has been granted, a Member may not participate in any discussion of, vote on, or discharge any function related to any matter in which they have a pecuniary interest as set out in 3.1 above. In addition a Member must observe the restrictions the Authority places on their involvement in matters where they have a pecuniary or non-pecuniary interest as defined by the Authority.

Disclosure of interests at meetings

- 3.6 Where an interest described above or in the following paragraph in any business of the Authority has been declared and, where a Member is aware or ought reasonably to be aware of the existence of that interest and they attend a meeting of the Authority at which the business is considered, the Member must disclose to that meeting the existence and nature of that interest at the commencement of its consideration. If not apparent in advance from any agenda, as soon as the interest becomes apparent as being relevant to the business under consideration a Member must immediately declare it.
- 3.7 Members have a personal interest in any business of the Authority where a decision in relation to that business might reasonably be regarded as affecting their well-being or financial position or the well-being or financial position of a

member of their family or any person with whom they have a close relationship to a greater extent than the majority of other Toll payers or inhabitants of the Authority's geographical area or "National Park area", as the case may be, affected by the decision.

Non-participation in the case of other prejudicial interest

- 3.8 Where Members have a personal interest (as set out in 3.7 above) they will also have a prejudicial interest, if the following also applies. That is, on an objective analysis, Members' judgement of the public interest would be affected through their financial position or that of a person or body which has been, or should have been, notified in the register of interest by the Member. The test to be applied is whether a member of the public with knowledge of the facts would reasonably regard the pecuniary interest as so significant that it would prejudice the Member's judgment.
- 3.9 Where there is such a prejudicial interest, the Member must not participate in any discussion of, vote on or discharge any function related to such prejudicial interest. An application may be made for special dispensation from the Authority in relation to this and the Member must observe any restrictions placed by the Authority in such circumstances.
- 3.10 There are some subject areas in relation to the Authority which, once an interest has been disclosed, a Member may nonetheless attend a meeting and vote. These include:
- Setting of Tolls, where the extent of the interest is limited to owning a boat and thereby paying a Toll.
 - Matters relating to schools, when the Member is a parent, guardian or governor of a child at a different school in the area. These include school meals, school transport and expenses.
 - An allowance, payment or indemnity given to Members
- 3.11 There are other subject areas which may apply in local government, but it is considered that these are unlikely in practice to apply to Members of the Authority. Please ask your Monitoring Officer for further information.

Gifts and hospitality

- 3.12 Members must declare all gifts, benefits or hospitality with a value of over £25. Members may also, if they wish declare those with a value below this level. The Monitoring officer will enter details of the gift on a public register of gifts and hospitality.

4 Complaints Procedure

- 4.1 The Localism Act provides that, where there are complaints of misconduct, the Authority must have in place arrangements under which allegations can be investigated and arrangements under which decisions on allegations can be made. The following procedure applies to complaints made against a Member by another Member, or by officers or any other person.
- 4.2 In relation to officers, a complaint should be after consultation with their Director and may be made in relation to a breach of the Protocol on Member and Officer Relations.

Making a complaint

- 4.3 The complaint should be made to the Monitoring Officer in writing or by e-mail. The address is:

Monitoring Officer, Broads Authority, Yare House, 62-64 Thorpe Road,
Norwich NR1 1RY

E-mail address: Hilary.slater@broads-authority.gov.uk

- 4.4 A copy of the complaint form, which should be used for all complaints, is attached at Appendix 1. This form should also be used for making a complaint under the Local Resolution Procedure. Completion of a Complaint Monitoring Form at Appendix 1a is also requested, but is not compulsory. Complaints should be made within 3 calendar months of the matter complained of, unless the complainant can provide a good reason for not having done so.
- 4.5 In order to make a complaint, a Member will need to have reasonable belief that there has been a breach of the Code. In order to have a reasonable belief that a breach has occurred, there will need to be direct evidence which supports the complaint. Members should consult the Monitoring Officer for advice if they are in doubt. Where the breach is a very minor or technical one, or where there is no clear evidence that a breach occurred, the Monitoring Officer may advise Member of the likely threshold and suggest that the matter might be more appropriately dealt with through the Authority's Local Resolution Process.
- 4.6 Once received a complaint will be acknowledged by the Monitoring Officer within five working days.

Confidentiality

- 4.7 As a matter of fairness and natural justice the subject Member should usually be told who has complained about them and received details of the complaint. However, in exceptional circumstances, the Monitoring Officer may withhold the complainant's identity if on request they are satisfied that the complainant has reasonable grounds for believing that they or any witness relevant to the complaint may be at risk of physical harm, or his or her employment may be jeopardised if their identity is disclosed, or where there are medical risks

(supported by medical evidence) associated with the complainant's identity being disclosed.

- 4.8 If a request for confidentiality is refused, the Monitoring Officer will explain the reason and give the complainant the option to withdraw the complaint, rather than proceed with his or her identity being disclosed.
- 4.9 The complaint will be acknowledged and the subject Member will be informed that a complaint has been made about him or her. Such notification will state that the complaint has been made; the name of the complainant (unless the complainant has requested confidentiality and this is being upheld, brief details of the complaint and the paragraphs of the Code which may have been breached. In very limited situations, the subject of the complaint may not be notified, in which case the Monitoring Officer will record his reason. Such situations may be where it is not reasonably possible to identify who the subject of the complaint might be.
- 4.10 Where specific details of complaints are passed to the local press and media, or posted on social media, this may prejudice an investigation and may also be a breach of the Code. Well-founded breaches of the Code should be reported to the Monitoring Officer and Members making allegations should not generate publicity in advance of the outcome of the complaint.

Initial Assessment

- 4.11 In determining whether to investigate a complaint, the Monitoring Officer will adopt a three-stage process, all in consultation with an Independent Person. At each stage the Monitoring Officer may request further clarification or documentation from the complainant, without this forming part of any investigation.

Stage 1 – The Monitoring Officer will decide whether the complaint is within the Authority's jurisdiction or "capacity", which will include consideration of the paragraphs of the Code to which the complaint might relate. If there is no jurisdiction then the complainant will be informed that the complaint will not be considered further.

Stage 2 - The Monitoring Officer will decide whether there is direct evidence that a breach took place. The level of proof will be on the balance of probabilities, that is to say, whether it is more likely than not. If there is no direct evidence, or if the complaint is considered to be vexatious (see paragraphs 4.20 and 4.21 below), or the matters complained of took place more than 3 months ago and there is no satisfactory explanation for the delay provided, then the complaint will be dismissed.

Stage 3 – The Monitoring Officer will decide whether the complaint is suitable to be dealt with within the Local Resolution Procedure, or whether it should be the subject of a full investigation. The criteria which will be used for this analysis are set out in Appendix 2.

Local Resolution Procedure

- 4.12 The Local Resolution Procedure is a process for low-level complaints including those made by one Member against another.
- 4.13 If the Monitoring Officer, in consultation with the Independent Person, decides to refer the matter to local resolution, then the complainant will be informed within 5 working days and the Local Resolution Procedure shall then apply (see section 5 below).
- 4.14 The criteria for referring the matter to the Local Resolution Procedure will include the following:
- Complaints that one member has failed to show respect and consideration for others
 - Complaints that one Member has made vexatious, malicious or frivolous complaints towards another.
 - Other low-level complaints which in the opinion of the Monitoring Officer, following consultation with an Independent Person, are suitable for informal resolution.

Formal Investigation

- 4.15 If the matter is to be fully investigated, as opposed to being dismissed or referred to the Local Resolution procedure, the Monitoring Officer will appoint an Investigating Officer who will prepare an initial report and recommendation. An Investigating Officer may be an officer or solicitor of another authority or a person independent of local government. When appointing the Investigating Officer, the Monitoring Officer will write to the relevant parties informing them that the matter is to be fully investigated and informing them who will be responsible for conducting the investigation. The Monitoring Officer should give an indication as to likely timescale for the completion of the investigation, which should be within 28 days. Referring a matter for investigation does not mean that there have been any findings of fact. It simply means that the alleged conduct, if proved, may amount to a failure to comply with the Code and that some action should be taken in response to the complaint.
- 4.16 A draft report will be sent by the Investigating Officer to the parties for them to comment on prior to the Monitoring Officer receiving the final version.
- 4.17 The Monitoring Officer will consider the recommendation of the Investigating Officer's report. If the recommendation is that there has been no breach of the Code, the Monitoring Officer will consult the Independent Person. If having taken into account the views of the Independent Person the Monitoring Officer approves the recommendation of the report then the Monitoring Officer will write to the complainant and the Member concerned to inform them that there will be no further action. This will normally be undertaken within 10 working days of the receipt of the report. The Monitoring Officer will give reasons for the decision. There is no appeal or review of that decision by the Authority or any other person.

- 4.18 If the investigation concludes that there is evidence of a breach of the Code then the Monitoring Officer will consult the Independent Person and make a decision either to:
- (a) resolve the matter without the need for a hearing. That may include the application of those sanctions limited to those set out in paragraph 4.30 below. The Monitoring Officer will write to the complainant and the member concerned to inform them of the decision. The Monitoring Officer will give reasons for the decision. There is no appeal or review of that decision by the Authority or any other person; or
 - (b) convene a meeting of the Authority's Hearings Committee, to hear the matter.
- 4.19 In exceptional circumstances it may be considered by the Monitoring Officer and Independent Person that the Chair of the Authority should be invited to consider whether the member should be asked to withdraw from Authority duties pending the outcome of the Hearings Committee. There will need to be reasonable grounds for the belief that such a step is in the interests of the subject Member or the Authority.

Frivolous and Vexatious Complaints

- 4.20 Complaints made against other Members or officers or people working on behalf of the Authority must be based upon fact and not motivated by malice or by political rivalry. Members should avoid making complaints which have little or no substance or where the evidence of any breach is weak or non-existent. Such complaints may be dismissed at the initial assessment stage. In the case of doubt as to whether a threshold has been met, advice should be sought from the Monitoring Officer. The making of frivolous or vexatious complaints may be conduct which will be considered a breach of the Code and dealt with under the Local Resolution Procedure.
- 4.21 Guidance on what circumstances may lead to a determination that a complaint is frivolous or vexatious are set out in Appendix 3. 3.

Local Resolution Procedure

- 4.22 The Authority has adopted this Local Resolution Procedure in order to promote and maintain high standards of conduct amongst members. It is intended to assist in the swift resolution of issues, so as to avoid the unnecessary escalation of the situation which may damage personal relationships within the Authority and the Authority's reputation. This procedure is also intended to resolve matters on an informal basis, where this is appropriate.
- 4.23 For informal resolution of a problem involving a member identified or reported to the Chair, Chief Executive or Monitoring Officer (where a formal complaint has not been made) the request will be passed on to the Chair and Vice-Chair (in the event they are not the original recipient). Confidential meetings will then be arranged between relevant parties with the Chair and Vice-Chair to engage in the process and seek a resolution to the issues raised. Any meetings may take place at the Authority's offices or other locations as is convenient. The process will be confidential and without prejudice to the parties involved to bring a formal complaint if the matter is not resolved. In the event that the matter is not resolved the content of the discussions shall not be referred to in any subsequent complaint. There is no power for any matter referred under the informal process to be subject to any sanction under the Code of Conduct. 3.
- 4.24 Complaints may be dealt with under this procedure as follows. Anyone who wishes to submit an allegation under this procedure should send the complaint (in the case of an officer following consultation with their Director) to the Monitoring Officer. Additionally, the Monitoring Officer may have referred a complaint to this procedure following consultation with an Independent Person. Following receipt of the complaint, or referral, the Monitoring Officer will act as follows:

Stage 1

- 4.25 The Monitoring Officer will undertake a brief preliminary investigation to establish the facts and the areas of dispute. Possible resolutions will be canvassed with the complainant and then the Member about whom the complaint has been made.
- 4.26 Then Monitoring Officer will also consider, following this, whether another course of action or more formal investigation, is more appropriate.

Stage2

- 4.27 A mediation meeting will be held between the person making the complaint, the Member against whom the complaint is made, the Monitoring Officer and (if considered appropriate) other persons invited by the Monitoring Officer. Such persons may include an Independent Person, the Chief Executive, Chair of the Authority, political group leader, or in the case of a complaint being made by an officer a companion or Director. The meeting may commence

with the parties in separate rooms and the Monitoring Officer acting as a mediator. The purpose of the meeting will be to try and resolve the matter without it going further.

Stage 3

- 4.28 If the matter is not resolved at stage two and the complainant wishes to proceed with it, the matter will be referred to a local resolution hearing before the Hearings Committee (see section 6 below in relation to the constitution of the Hearings Committee). The person making the complaint will be asked to submit a statement in writing within 14 days and the member complained against will respond within 14 days. Either party may submit a statement from a witness.
- 4.29 Within 28 days of the written evidence a hearing will be set before the Hearings Committee. Any party may have at their own expense a companion or representative, provided that in the case of representation the Monitoring Officer and other party have been given 21 days' notice to this effect. Evidence will be limited to the contents of the statements. If any party does not attend, the hearing will proceed in their absence. The Monitoring officer will be available to advise the committee. After hearing oral evidence, the Hearings Committee will come to a conclusion on the allegation, which will be notified to the parties.
- 4.30 The possible outcomes to a hearing under the Local Resolution Procedure are:
- A finding that the matter does not warrant any further action to be taken
 - A recommendation to the Monitoring Officer that there be a change to procedures or that more formal investigation action be taken
 - A finding that the complaint be recorded by the Monitoring Officer as vexatious
 - A finding that the complaint is upheld, but no further action is required
 - A finding that the complaint is upheld and that the Member should be censured
- 4.31 Unless the complaint has been upheld, publicity will not be given to the names of the parties. The hearing before the Hearings Committee will be confidential.

3. Paragraph inserted 12.07.18

5 Hearings Procedure

- 5.1 If a hearing is required, the Monitoring Officer will write to the subject Member proposing a date for the hearing. This date will normally be within six weeks of the investigation report and will be before the Hearings Committee. The Hearings Committee shall be constituted in accordance with Part B of the Authority's Standing Orders and shall have a quorum of three Members.
- 5.2 The Monitoring Officer will outline the hearing procedure, the Member's rights and ask for a written response from the Member within a set time to establish whether:
- the Member wishes to attend the hearing
 - the Member disagrees with any of the findings of fact in the investigation report and if so which findings and the reason for disagreement
 - the Member wishes to give oral evidence, or rely on written submissions
 - witnesses will be called by the Member to give evidence (there is no power on the part of the Authority to compel attendance by a witness)
 - they wish any part of the hearing to be in private
 - they wish any part of the investigation report or other documents to be withheld from the public
- 5.3 In complex cases, if the Monitoring Officer considers that a preliminary hearing is necessary to consider the matters in 5.2, they shall convene one.
- 5.4 Any party may have at their own expense a companion or representative, provided that in the case of representation the Monitoring Officer and other party have been given 21 days' notice to this effect.
- 5.5 The parties and the Hearing Committee will be sent a full bundle of documents for the hearing at least 5 days prior to the hearing.

Procedure at hearing

- 5.6 The procedure at the hearing will be in accordance with a procedure to be determined by the Monitoring Officer. It will usually adopt the following procedure
- The Investigating Officer will present his/her report to the Hearing Committee
 - The Investigating Officer will be questioned on the report by any party and by the Hearings Committee
 - Evidence will be given with questions being asked by any party and by the Hearings Committee. The order will be the complainant first, then the Member the subject of the complaint and then any witnesses in such order as the Hearings Committee decides appropriate
 - The Hearings Committee will withdraw to consider their decision, with the outcome notified by the Chair. The decision will be confirmed in a

Decision Notice which will be sent to the parties within 5 working days of the hearing.

- 5.7 If the Hearings Committee concludes that there has been no breach of the Code, there will be no further action. There is no appeal or review of that decision by the Authority or any other person. The Hearings Committee will give reasons for its decision.
- 5.8 If the Hearings Committee concludes that the Member the subject of the complaint has failed to comply with the Code, then the Authority has delegated its powers to make such sanction as it considers it to be appropriate and proportionate in order to promote and maintain high standards.

Sanctions

- 5.9 These sanctions may include any of the following:
- A request that the Member submit a written apology in a form specified by the Hearings Committee
 - A request that the Member undertake specified training
 - A request that the Member participates in such conciliation as may be specified
 - A requirement that the Member deals with Authority business through one specified point of contact
 - Placing such restrictions on Members access to staff which may be reasonable in the circumstances and in accordance with the Protocol on Member and Officer relations, providing that such restrictions do not prevent the Member from carrying out their duties
 - A requirement that the Member does not attend at the Authority's offices, unless attending statutory meetings
 - Reporting the Member to his/her County or District Council, Secretary of State as appropriate and reporting the matter to a full meeting of the Authority
 - Reporting the matter to a full meeting of the Authority with a recommendation that the Member has any privileges to which they are entitled removed or that they be removed from any appointment made by the Authority to any external body
 - Reporting the matter to a full meeting of the Authority with a recommendation that the Member be removed from any committee to which they are currently appointed.
 - No sanction

Publication of findings

- 5.10 A summary of the complaint and findings will be reported to a full meeting of the Authority, for their information.



Members' Code of Conduct Complaint Form

To be used if you wish to make a complaint that a Member or co-opted Member of the Authority, has failed to comply with the Members' Code of Conduct.

If English is not your first language, please contact us if you require help to complete this form.

Your details

1. Please provide us with your name and contact details

| | |
|--------------------|--|
| Title: | |
| First Name: | |
| Last Name: | |
| Address: | |
| Daytime telephone: | |
| Evening telephone: | |
| Mobile telephone: | |
| Email address: | |

We will only use the information you provide to us for the purposes of processing your complaint. Your information, including any personal information you provide to us (such as name and contact details) may be shared with the people referred to below, or with other relevant authorities as required, only for the purposes of processing your complaint.

All comments and complaints are treated confidentially and will not disadvantage you in any future dealings with Broads Authority. It may not always be possible to keep your details confidential, such as where your complaint is about a third party or where particular legislation applies to your complaint.

We will tell the following people about this complaint:

- The Member(s) you are complaining about
- The Monitoring Officer to the Authority
- The Authority's Independent Person
- The Chair of the Authority
- The Chief Executive of the Authority

If you have serious concerns about your name and details of your complaint being released, please complete **section 6** of this form.

2. Please tell us which complainant type best describes you:

| | |
|--------------------------|---|
| <input type="checkbox"/> | Member of the public |
| <input type="checkbox"/> | A Member or co-opted Member of an authority |
| <input type="checkbox"/> | Member of Parliament |
| <input type="checkbox"/> | Local authority monitoring officer |
| <input type="checkbox"/> | Broads Authority employee or volunteer |
| <input type="checkbox"/> | Other (please provide details) |

Making your complaint

- 3.** Once you have submitted your complaint, it will be considered by the Monitoring Officer of the Authority and after reasonable consultation with the Authority's Independent Person, who will assess, on the basis of your written submission and any additional relevant material, whether the alleged conduct might amount to a failure to comply with the Members' Code of Conduct.

The Monitoring Officer has the following range of options available to him/her: Formal Investigation (which will involve an investigation of the complaint), referral to the Authority's Local Resolution Procedure or no further action, for instance if it is considered that any failure to comply with the Code of Conduct is of a trivial nature.

- 4.** Please provide us with the name of the Member(s) you believe have breached the Broads Authority Members' Code of Conduct and, where the Member is also a Councillor, the name of their authority.

| Title | First Name | Last Name | Authority Name |
|-------|------------|-----------|----------------|
| | | | |
| | | | |
| | | | |
| | | | |

5. Please explain in this section (or on separate sheets) what the Member has done that you believe breached the Members' Code of Conduct. If you are complaining about more than one Member you should clearly explain what each individual person has done that you believe breached the Code of Conduct.

A copy of the Authority's Members' Code of Conduct can be found on the Broads Authority website at <http://www.broads-authority.gov.uk/>

Alternatively, a paper copy can be obtained from the Monitoring Officer to the Authority by writing to:

Monitoring Officer, Broads Authority, Yare House, 62-64 Thorpe Road,
Norwich, Norfolk. NR11RY

- You should be specific, wherever possible; about exactly what you are alleging the Member said or did. For instance, instead of writing that the Member insulted you, you should state what it was they said.
- You should provide the dates of the alleged incidents wherever possible. If you cannot provide exact dates it is important to give a general timeframe.
- You should confirm whether there are any witnesses to the alleged conduct and provide their names and contact details if possible.
- You should provide any relevant background information.
- You should tick the box to confirm that the facts set out are true

Please provide us with the details of your complaint and the outcome from this complaints process that you would like to see happen. Continue on a separate sheet if there is not enough space on this form.

Do you wish your complaint to be dealt with under the Authority's Local Resolution Procedure?

Yes/No

If you answered No, please briefly explain your reason:

☐ I confirm by ticking this box and sending this form that the facts I have set out in my complaint are true

Date:

Only complete this next section if you are requesting that your identity is kept confidential.

6. In the interests of fairness and natural justice, we believe Members who are complained about have a right to know who has made the complaint. We also believe they have a right to be provided with a summary of the complaint. We are unlikely to withhold your identity or details of your complaint unless you have good reason to justify the Authority doing so.

Please note that requests for confidentiality or requests for suppression of complaint details will not automatically be granted. The Monitoring Officer to the Authority, in consultation with the Authority's Independent Person, will consider the request alongside the substance of your complaint. We will then

contact you with the decision. If your request for confidentiality is not granted, we will usually allow you the option of withdrawing your complaint.

However, it is important to understand that in certain exceptional circumstances where the matter complained about is very serious, we can proceed with an investigation or other action and disclose your name even if you have expressly asked us not to.

Please provide us with details of why you believe we should withhold your name and/or the details of your complaint:

Additional Help

7. Complaints must be submitted in writing. This includes electronic submissions. However, in line with the requirements of equalities legislation, we can make reasonable adjustments to assist you if you have a disability that prevents you from making your complaint in writing.

If you need support in completing this form, please let us know as soon as possible.

This complaint should be submitted to the Monitoring Officer to the Authority, by sending to the following contact addresses:

By post to: Monitoring Officer, Broads Authority, Yare House, 62-64 Thorpe Road, Norwich, Norfolk. NR11RY

Or by e-mail to: Hilary.Slater@broads-authority.gov.uk

Privacy and Data processing ⁵.

8. The Authority will process any personal information in line with the Data Protection Act 2018 and the EU General Data Protection Regulation.

Information you provide to us on this form will be shared with certain individuals who undertake roles within the complaints process, including the subject Member, Independent Person, Investigating Officer (who may be external to the Authority) and members of the Hearings Committee.

You also acknowledge by making your complaint that personal information which you give us may be placed in the public domain should the matter proceed to a hearing.

The basis of processing will be that of public task i.e. tasks carried out by the Authority in the public interest or power vested in the Authority.

Your information will be retained for 7 years following the outcome of your complaint or last action taken in relation to it. We will process your data in accordance with Data Protection Principles using appropriate technical and organisational measures.

Broads Authority is the Data Controller in relation to your data. It has a Data Protection Officer (DPO) who can be contacted at the postal address on this form or at dpo@broads-authority.gov.uk. Our DPO is currently our Monitoring Officer.

You have the right to see any personal information that we hold about you. Such requests are called subject access requests. If you would like to make a subject access request please contact the Authority's Data Protection Officer. We will respond to such requests within one month. There is no fee to make a request.

You may ask us to rectify any personal information which is incomplete or inaccurate. You may also ask us to erase such data once processing is no longer necessary or if you object to processing or consider that we are processing it unlawfully. We will consider such requests and if we refuse, we will give reasons.

5. Section 8 added 12.0718



Private and Confidential

Code of Conduct Complaint Monitoring Form

The Broads Authority is committed to the provision of equal opportunity and specifically to conducting its affairs in a manner which will not discriminate against, either directly or indirectly, any person on the grounds of: disability; gender; transgender; race; ethnic or national origin; religion or belief; age or sexual orientation.

To help us meet this commitment, it would be helpful if you would complete this form. This monitoring form will be separated from your complaint on receipt and will be used solely for the purposes of monitoring the process.

Section 1 (please tick the boxes which apply)

| | | |
|------------|------------|--------------------------|
| My age is: | Under 21 | <input type="checkbox"/> |
| | 21-30 | <input type="checkbox"/> |
| | 31-40 | <input type="checkbox"/> |
| | 41-50 | <input type="checkbox"/> |
| | 51-60 | <input type="checkbox"/> |
| | 61-64 | <input type="checkbox"/> |
| | 65 or over | <input type="checkbox"/> |

| | | |
|---------------|--------|--------------------------|
| My gender is: | Female | <input type="checkbox"/> |
| | Male | <input type="checkbox"/> |

Section 2 (please tick one box only)

| | | | |
|-----------------------------|--------|-----------|--|
| I would describe myself as: | White: | British | <input type="checkbox"/> |
| | | Irish | <input type="checkbox"/> |
| | | Any other | <input type="checkbox"/> please write in |

| | | |
|--------|---------------------------|--|
| Mixed: | White and Black Caribbean | <input type="checkbox"/> |
| | White and Black African | <input type="checkbox"/> |
| | White and Asian | <input type="checkbox"/> |
| | Any other | <input type="checkbox"/> please write in |

| | | |
|-------------------------|-----------|--------------------------|
| Asian or Asian British: | Indian | <input type="checkbox"/> |
| | Pakistani | <input type="checkbox"/> |
| | | <input type="checkbox"/> |

| | | |
|-----------------------------------|-----------------------------------|--|
| | Bangladeshi Any other | <input type="checkbox"/> please write in |
| Black or Black British: | Caribbean African Any other | <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> please write in |
| Chinese or other ethnic group: | Chinese Any other | <input type="checkbox"/> <input type="checkbox"/> please write in |

| Section 3 | | |
|---|------------------------------|-----------------------------|
| Do you consider yourself to have a disability*? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

Thank you for your co-operation. Please return this form with your complaint.

*The Equality Act 2010 defines disability as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities'.

Criteria for consideration of a complaint by Monitoring Officer

In deciding whether to accept or reject a complaint of breach of the Code, or to refer it to the Local Resolution Procedure, the Monitoring Officer has a wide discretion. He or she will take into account the following criteria, where relevant.

- Public interest factors including the seriousness of the alleged breach, whether there has been any breach of trust, the extent of any harm caused and whether there has been any discrimination.
- Proportionality by balancing the seriousness of the allegation against the resources required to investigate the allegation
- Whether there are any aggravating factors or significant mitigating factors
- Whether a prompt acknowledgment and apology has been offered
- Whether the complaint is one of a pattern by or against a Member
- Whether the complaint appears to be malicious, frivolous or vexatious
- Whether the complaint suggests that there is a wider problem as affects the Authority
- Whether training or conciliation would be the appropriate response
- Whether either the complainant or subject Member has indicated a preference for Local Dispute resolution

Criteria for determination as to whether a complaint is frivolous or vexatious

At the Initial Assessment Stage, the following criteria shall be used in determining whether a complaint is frivolous or vexatious:

- Whether the matters complained of occurred more than 3 calendar months earlier and if so whether any reason given for a delay in making the complaint is sufficient.
- Whether the complaint appears to be of “tit for tat” nature in that for example, the complainant has themselves been the subject of a complaint by the subject member.
- Whether in less-serious cases, the matter has already been the subject of reasonable and sufficient attempts by the subject member to apologise and make amends for any behaviour complained of.
- Whether the complainant has made other complaints under the Members’ Code of Conduct. If so, the number, nature and subject matter of those complaints will also be considered.
- Whether the subject matter of the complaint is a trivial matter out of proportion to its significance.
- Whether the complainant has adopted a “scattergun” approach: pursuing a complaint with the Authority and at the same time, with any number of the following such as a Member of Parliament, the Authority’s independent auditor, National Audit office, Government department, local police, solicitors, media and on social media.
- Whether the complaint arises from facts which have been the subject of a prior determination by a decision-making body.
- Whether the content of the complaint includes gratuitous comments about the subject Member or other third parties which could be considered insulting, abusive or defamatory in nature.