

Committee(s) Member Development and Standards Sub-Committee	Date: 17 July 2024
Subject: Members' Code of Conduct	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	6
Does this proposal require extra revenue and/or capital spending?	No
Report of: Comptroller and City Solicitor and Town Clerk and Chief Executive	For Decision
Report author: Edward Wood, Assistant City Solicitor	

Summary

The Civic Affairs Sub-Committee reviewed the Corporation's current Members' Code of Conduct and the Local Government Association ("LGA") Model Councillor Code of Conduct in October 2022. Members expressed a preference to adopt a new hybrid Code combining the more modern drafting of the LGA Code with some of the City specific elements from the Corporation's current Code. A draft of a potential Code was then considered at further meetings of the Civic Affairs Sub-Committee in December 2022 and March 2023, and by your Member Development and Standards Sub-Committee in December 2023. Following this iterative process all Members, Co-opted Members and Independent Persons were consulted on the draft document. The consultation responses are now appended in full for your further consideration. This report also summarises the issues raised and provides some additional commentary. Some key issues that require further Member input concern the definition of Antisemitism, the registration of Masonic lodges and the extent to which Members ought to be required to co-operate with any standards investigation or determination. A number of other technical points have also been raised that may or may not require any further amendments to the draft Code. Once your Sub-Committee is content with the text of the draft Code, it is proposed that it will go on to the Policy and Resources Committee in September 2024 for further consideration and the Court of Common Council in October 2024 for formal adoption.

Recommendation(s)

Members are asked:

- To approve the draft Code of Conduct at Appendix 1, with any further amendments, for onward submission to the Policy and Resources Committee and the Court of Common Council; or
- Delegate authority to the Town Clerk, in consultation with the Comptroller and City Solicitor and the Chair and Deputy Chair, to make any further changes prior to onward submission.

Main Report

Background

1. Under section 27 of the Localism Act 2011 the City Corporation is under a statutory duty to promote and maintain high standards of conduct by Members and Co-opted Members. It must in particular adopt a code dealing with the conduct expected of Members and Co-opted Members when they are acting in that capacity. Under section 28 of the Localism Act 2011 the Code of Conduct must be consistent with the Seven Principles of Public Life. It must also include the provision that the City Corporation considers appropriate in respect of the registration and disclosure of interests, in addition to the statutory requirements in relation to disclosable pecuniary interests.
2. The terms of reference of your Sub-Committee include “preparing, keeping under review and monitoring the City of London Corporation’s Member Code of Conduct and making recommendations to the Court of Common Council in respect of the adoption or revision, as appropriate, of such Code of Conduct”. Previously this responsibility sat with the Civic Affairs Sub-Committee. The City Corporation’s current Code of Conduct was adopted by the Court of Common Council on 16 July 2020.
3. The Civic Affairs Sub-Committee reviewed the Corporation’s current Members’ Code of Conduct and the LGA Model Councillor Code of Conduct in October 2022. Members expressed a preference to adopt a new hybrid Code combining the more modern and illustrative drafting of the LGA Code with some of the City specific elements from the Corporation’s current Code. A draft of a potential Code was then considered at further meetings of the Civic Affairs Sub-Committee in December 2022 and March 2023, and by your Sub-Committee in December 2023.
4. Following this iterative process your Sub-Committee agreed to consult more widely on the proposals, by circulating the latest version of the draft Code (Appendix 1) to all Members and Co-opted Members to whom the Code applies, as well as to the Panel of Independent Persons who have to apply the Code. A separate document highlighting all of the modifications made to the LGA Code as tracked changes is included for comparison (Appendix 2). The Corporation’s current Members’ Code of Conduct (Appendix 3) and the LGA Code (Appendix 4) are also attached in full for information.
5. The consultation period ran from 15 January 2024 to 19 February 2024. During this period eight individual responses were received (Appendix 5) – six from elected Members, one from a Co-opted Member, and one from an Independent Person. The responses have been anonymised, but relevant details can be provided on request. The proposals were also discussed at the informal Court of Common Council meeting on 15 February 2024 and notes taken (Appendix 6).
6. A short verbal update on the outcome of the consultation was provided to your Sub-Committee on 8 March 2024 and officers were requested to bring a more detailed report to this meeting. Subsequently a further Member request to amend the Code of Conduct was sent by email to your Chair and Deputy Chair (Appendix 7) and they have asked for this matter to also be considered by your Sub-Committee.

Issues raised during the consultation process

Definition of Antisemitism

7. The issue that was raised most frequently in the consultation responses relates to the inclusion of a specific definition of Antisemitism. This definition, provided by the International Holocaust Remembrance Alliance (IHRA), is in the current Code. Its inclusion was first approved by the Court of Common Council in December 2019. The Court report from the time explains that:

In December 2016 the then-Prime Minister announced the Government's intention to adopt the IHRA definition of anti-Semitism and the then-Secretary of State for Communities and Local Government wrote to Council Leaders encouraging them to adopt the definition. At least 19 London local authorities...and the Mayor of London, have since adopted resolutions on anti-Semitism in line with the IHRA definition. At a meeting of the Leaders' Committee of London Councils on 9 October 2018, its members resolved to commend to London local authorities that had not already done so to, a. Adopt the IHRA definition of anti-Semitism, including the agreed working examples b. Include the IHRA definition and working examples within individual councils' constitutions and codes of conduct for members and officers.

8. Your Sub-Committee looked at this issue prior to the consultation and considered that the definition should be retained. However, several respondents felt that this could be perceived as a greater emphasis on Antisemitism. They either wanted more examples of other types of discrimination to be included in the Code, or else to remove this section entirely and just rely on the general equality provisions. Others at the informal Court meeting felt that it should be retained, given that it had already featured in the existing Code for several years, and that any decision to remove it could be misinterpreted.
9. Both the current Code and the proposed Code prohibit any unlawful discrimination relating to the protected characteristics under the Equality Act 2010, including race and religion or belief, and this would encompass discrimination against a Jewish person whether there was a specific definition of Antisemitism or not. The IHRA definition and working examples simply provide additional detail, nuance and context. Therefore, the draft Code would still serve its intended purpose if the text in question were removed.
10. If Members wished to include additional detail about other types of discrimination (for example, Islamophobia is mentioned a couple of times in the responses) then this would also be an option. However, it is not possible to be prescriptive about every discriminatory act and the City Corporation could still therefore be perceived to be singling out some types of discriminatory behaviour rather than others. As highlighted in the responses there is not necessarily a widely accepted and concise definition of other discriminatory behaviours, so an agreed form of text would need to be arrived at.

(For discussion)

Promoting equality and respect

11. One respondent suggested that the wording at C2.1, "I do not bully any person" and C2.2, "I do not harass any person" should be combined to say, "I promote respect and will not bully/harass any person." However, the current drafting has been given careful

thought by the LGA, and whilst the precise wording of the Corporation's Code is a matter for Members, it is suggested that for the sake of consistency it is best not to depart from the LGA text on this point unless there are strong local reasons to do so. As the respondent acknowledges, C1 already contains a requirement to treat others with respect. It might be an unintended consequence of any change that a Member could be complained about for not actively promoting respect. The respondent mentions the requirement to promote equalities at C2.3, but there is arguably a synergy between that requirement and the Public Sector Equality Duty, as explained at paragraph 23.

12. The same respondent suggested that the wording at C2.3, "I promote equalities and do not discriminate unlawfully against any person" should be broadened to say, "I promote equalities and do not discriminate against any person, including those with protected characteristics." Whilst the sentiment is unimpeachable, the respondent acknowledges that this goes beyond the legislative position and that there might be legal concerns about such an approach. Some forms of discrimination under the Equality Act 2010 are lawful, and some other forms of discrimination that do not relate to protected characteristics might be entirely appropriate.

(For discussion, but no action necessarily required)

Statutory responsibility of the Monitoring Officer

13. It was noted by one respondent that paragraph 14 of the draft Code omits the LGA wording, "Your Monitoring Officer has statutory responsibility for the implementation of the Code of Conduct..." It is respectfully submitted that the LGA Code is wrong on this point. Whilst the Monitoring Officer is happy to provide advice on any matters that may relate to the Code of Conduct, and paragraph 14 of the draft Code still encourages Members to seek that advice, the responsibility of the Monitoring Officer under the Localism Act 2011 extends only to the register of interests; the previous responsibility for administering the statutory scheme under the Local Government Act 2000 having been removed.
14. The Monitoring Officer does have a responsibility under section 5 of the Local Government and Housing Act 1989 to report to the Court of Common Council where he considers that the Corporation has acted or is about to act unlawfully, and this could include a failure by the Corporation to comply with its statutory duty to promote and maintain high standards of conduct under the Localism Act 2011, but this doesn't constitute a statutory responsibility for the implementation of the Code. It is not therefore recommended that this wording is reinstated.

(No action recommended)

Gifts and hospitality

15. One respondent noted that the draft Code increases the value of gifts and hospitality that must be registered from £50 to £100, when compared with the LGA Code. It is open to Members to revisit this point, if they wish. However, the £100 figure is consistent with the Corporation's current Code. Members have looked at this matter a number of times over recent years (the alternative value of £50 was also mooted by the Committee on Standards in Public Life in 2019) and decided that the higher figure is more appropriate for local circumstances. It is worth noting that the Corporation's current and

proposed arrangements do also require the registration of gifts and hospitality with a cumulative value of £200, when received from a single donor within a rolling twelve-month period. This is in addition to the LGA requirements and would capture gifts and hospitality of any value (even below £50) if they formed part of a larger or more significant pattern.

(For discussion, but no action necessarily required)

Nolan Principles

16. One respondent suggested setting out the Seven Principles of Public Life (the Nolan Principles) in full in the body of the Code. The current drafting is based entirely on the LGA Code, with the individual principles and the explanatory text set out in Appendix A. Again, whilst presentation is a matter for Members, it is suggested that for the sake of consistency it is best not to depart from the LGA layout unless there are good local reasons to do so. We could reinsert the hyperlink to the Guidance on the Nolan Principles from the Committee on Standards in Public Life, although this is effectively mirrored in Appendix A. However, it is noted that Appendix A omits the wording "...and treat others with respect" from the section on Leadership, so this could usefully be added. It might also be sensible to include a reference to Appendix A in paragraph 6.
17. The respondent additionally suggested that paragraph 6 should state in relation to the Nolan Principles that, "Members will be expected to comply with these." However, Members will note that paragraph 6 currently states that councillors, etc. "...should uphold the Seven Principles of Public Life..." 'Uphold' is arguably a stronger or more positive term than 'comply' and is what the LGA settled upon. 'Uphold' is also arguably more appropriate given the very general nature of the Nolan Principles. It should be noted that the more detailed provisions in the Code (which must be complied with) have been developed specifically for the role of Member. The respondent correctly makes the point that there is further guidance available on the Nolan Principles and what they mean, although this can be referred to without being included in full in the Code itself.

(For discussion)

Acting in accordance with the law, etc.

18. One respondent suggested that where the draft Code at C6 requires Members taking decisions on behalf of a charity or company to act in the best interests of that body, and to manage any conflicts, it should also require them to act in accordance with the relevant law. However, we normally take this to be an implicit requirement that does not need to be explicitly stated. Breaking the law generally carries its own sanctions that are more severe than anything that can be imposed as part of the Corporation's standards regime. Where there is a criminal prosecution, this will take precedence over any Code of Conduct investigation, and an illegal act committed when acting as a Member can already be taken into account in any complaint proceedings.
19. The above comments are also applicable to the related suggestion that Members acting as governors of educational establishments should observe the applicable law and guidance. Whilst it would be possible to add a separate entry in relation to governors at C6, those Members acting as governors of external schools, academies, etc. would be covered by the Protocol for Members serving on Outside Bodies, whilst those Members

sitting on one of the Boards of Governors of the Court of Common Council would be covered by the Code in the normal way.

(For discussion, but no action necessarily required)

Guidance on use of Corporation resources and facilities

20. One respondent suggested including guidance on when Members can use the facilities at Guildhall, and Corporation IT equipment, for their own work or personal use. It is respectfully submitted that the Code of Conduct should deal with overarching principles and behaviours and that this sort of detail might sit more naturally in other guidance or policy documents, as the respondent acknowledges. Paragraph 4 of the draft Code already states that it should be read in conjunction with various other documents, including policies on the use of the Corporation's resources.

(For discussion, but no action necessarily required)

Guidance on direct contact with officers

21. One respondent suggested including guidance on when Members can contact officers, especially junior officers, in order to avoid undue pressure and inefficient working arrangements. Again, it is respectfully submitted that the Code of Conduct should deal with overarching principles and behaviours and that this sort of detail might sit more naturally in the Member/Officer Charter, which is to be read in conjunction with the Code. For example, paragraph 6(b) of that document already provides that officers have a right to expect from Members:

vi. not to be subject to bullying or to be placed under undue pressure and, in this respect, Members should have regard to the seniority of Officers in their dealings with them and should not engage junior officers in discussions and requests more properly directed at senior officers.

(For discussion, but no action necessarily required)

Application of the Code to Members' private lives

22. One respondent suggested that paragraph 11 of the draft Code should be expanded to state that a Member always represents the Corporation regardless of whether the setting is public or private. The text currently states that the Code would apply to Members when they are acting, claiming to act, or giving the impression that they are acting in that capacity. It would also apply when Members refer publicly to their role or use knowledge that could only be obtained in that role. This provides more explanation of the position than the Corporation's current Code and is already considered to apply the draft Code as widely as possible, given the legal framework. Section 27(2) of the Localism Act 2011 requires the Corporation to "...adopt a code dealing with the conduct that is expected of members and co-opted members...when they are acting in that capacity." The case of *Livingston v Adjudication Panel for England [2006]* (in relation to the previous standards framework) also reiterated the need to separate the person from the office.

(No action recommended)

Requirement to co-operate with any investigation or determination

23. Two respondents objected to the requirement in C8.2 of the draft Code to co-operate with any Code of Conduct investigation and/or determination. On the one hand it might be viewed as unattractive that a Member could be subject to an initial complaint, and then find themselves subject to a further complaint because they failed to co-operate in the original process. It is less common to seek to compel a particular positive behaviour rather than to prohibit a negative behaviour. It is also not clear what degree of co-operation would be required to satisfy this test, although as with other matters this could be left to the judgement of the Independent Panel.
24. On the other hand, it is hard to see how a Member can comply with the Nolan Principles and the other provisions of the Code without co-operating in such a process. The LGA presumably included this requirement in their Model Code because there is no statutory provision compelling Members to participate in the complaints process or to comply with certain possible outcomes, such as undergoing training or issuing an apology. This can be frustrating for complainants and in some cases could bring the Corporation into disrepute.
25. Either way, it is respectfully submitted that it is not fair to characterise this requirement (as one respondent did) as requiring Members to co-operate with officers, and of standing the relationship between officers and Members on its head. As explained in paragraph 1 above, the City Corporation itself is under a statutory duty to promote and maintain high standards of conduct by Members and Co-opted Members. Although the complaints process is currently supported by officers and the Independent Panel, this is at the request of the Court of Common Council, and in accordance with a Code and procedures ultimately agreed by the Court. Under the current arrangements any individual finding that there has been a breach of the Code must be ratified by the Court before it takes effect.

(For discussion)

Confidentiality and access to information

26. A view was expressed at the informal Court that renewed focus was needed on how confidential and non-public information was to be filtered and handled by Members. Your Sub-Committee will recall that concerns around the leaking of non-public information were raised at both your July and September meetings. As previously advised, both the current Code of Conduct (2(g)-(h)) and the draft Code of Conduct (C4) contain wording relating to confidentiality and access to information. Both sets of provisions are considered to sufficiently address these issues from a drafting perspective. Members may want to look at additional practical steps that could be taken to supplement the Code requirements.

(For discussion, but no action necessarily required)

Alternative version

27. One respondent sought confirmation on the documents being consulted upon, and this point was also raised at the informal Court. To clarify, there is only one version of the

draft Code that has been used in the consultation process. This was circulated by the Town Clerk by email on 15 January 2024, and appears at Appendix 1. Consultees were also directed via a link to the most recent report to your Sub-Committee, which was considered in public session on 15 December 2023.

(No action required)

Registration of individual Masonic lodges

28. This issue was raised with your Chair and Deputy Chair after the formal consultation period but is included for consideration in this report at their request. Freemasonry comes under the heading of non-pecuniary interests, which are not prescribed in the legislation, in contrast with disclosable pecuniary interests. It is therefore a matter of judgement at a local level as to which non-pecuniary interests should be registered. The LGA Code does not include a specific reference to Freemasonry in Appendix B Table 2. It does include membership of “Any Body directed to charitable purposes”, although it is understood that this would only encompass membership of the Freemasons’ Grand Charity, rather than membership of the fraternity itself.
29. The Corporation’s current Code, and the text in the draft Code at Appendix B Table 2, specifically reference membership of any “Fraternal or Sororal Society” as a non-pecuniary interest that must be registered. The Corporation’s current Guidance on the Code of Conduct (which will need to be reviewed once the Code itself is updated) explains that this “would include Freemasonry and the Royal Antediluvian Order of Buffaloes”. The current provisions are couched in this way because, when they were first introduced in 2014, a concern was raised that it would be contrary to judgements of the European Court of Human Rights to require Members to declare their membership of any specific organisation (as opposed to types of organisations in the generality).
30. Article 11 of the European Convention on Human Rights provides a fundamental right to freedom of association which includes joining political parties and societies, etc. This right may only be lawfully interfered with where it is necessary and proportionate to achieve a legitimate aim e.g. the protection of the rights of others, public safety, etc. It should also be noted that Article 11, together with Article 8 (respect for private and family life) are also reflected in the law governing the processing of personal data. Information relating to a Member’s interests can only be processed by the Corporation i.e. collected, stored and published, where it is necessary and proportionate for the discharge of its public functions.
31. It is understood that the current practice regarding registration varies – some Members and Co-opted Members who are Freemasons do list their membership of individual lodges, some do not. It might be disproportionate to require the registration of all individual lodges, as this will not normally be relevant to the work of the Corporation. However, there is a stronger argument for requiring membership of Guildhall Lodge to be specifically registered. It is arguable that this would in any event come under the heading of membership of any “Club or Society active in the City of London”. This could for example be specified in a future iteration of the Guidance – at the moment only Ward Clubs are cited as an example.
32. The submission referenced Lord Lisvane’s comments at paragraph 438 of his Review, about the registration requirements at the time not providing adequate transparency.

For clarification, this related to Members' registers of interests being accessible via their individual webpages, rather than via dedicated pages on the website. It was not a specific reference to Freemasonry, although Lord Lisvane did then refer back to those comments in his section on Freemasonry. He also made brief reference to Guildhall Lodge:

449. I should put beyond any doubt that I make no comment on Freemasonry or its role but, given the views put to me, I think it helpful to comment upon issues of transparency. The recommendations that I make on recorded votes, and on the availability of a full Register of Interests as a single document on the website, will contribute to that transparency.

450. So far as the use of Guildhall facilities (also raised with me) is concerned, I take it that Masonic gatherings are on the same basis, and charged on the same basis, as any other gathering of Members for a purpose not directly connected with Corporation business.

(For discussion)

Mandatory training

33. No issues were raised during the consultation in relation to the new requirement for mandatory training under C8.1, which states that, "I undertake Code of Conduct training provided by the Corporation". However, it may be worth clarifying the relevant timescales again at this juncture, prior to onward submission of the draft Code. When your Sub-Committee considered mandatory training arrangements as a separate item in December 2023 it was agreed that these new arrangements should be timed to commence in the next municipal year, following the 'all out' elections. Therefore, it is not proposed that C8.1 should be implemented during the current municipal year, even if the new Code is approved by the Court within this timeframe.

(No action required)

Next steps

34. Once your Sub-Committee has fully considered the consultation responses and is content with the text of the draft Code the proposals can be reported to the Policy and Resources Committee for further consideration. It is currently anticipated that this will be in September 2024. The draft Code can then be presented to the Court of Common Council for formal adoption. It is currently anticipated that this will be in October 2024.

Conclusion

35. A new draft Code of Conduct, combining the LGA Code with some elements of the Corporation's current Code, has been considered by the Civic Affairs Sub-Committee and by your Sub-Committee on a number of occasions. It has also now been the subject of a wider consultation process and the responses are attached for further consideration and comment. This report summarises the issues raised and provides some additional analysis. Once your Sub-Committee is content with the text of the draft Code it will need to be considered by the Policy and Resources Committee before going on to the Court of Common Council for adoption.

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Appendices

Appendix 1 – Draft Code of Conduct

Appendix 2 – Draft Code of Conduct showing tracked changes from LGA Code

Appendix 3 – Current Corporation Code of Conduct

Appendix 4 – LGA Code

Appendix 5 – Consultation responses

Appendix 6 – Feedback from the informal Court of Common Council

Appendix 7 – Subsequent email regarding Freemasonry

Background papers

Report to the Civic Affairs Sub-Committee dated 11 October 2022

Report to the Civic Affairs Sub-Committee dated 6 December 2022

Report to the Civic Affairs Sub-Committee dated 31 March 2023

Report to the Member Development and Standards Sub-Committee dated 15 December 2023