

Committee(s) Policy and Resources Committee	Date: 16 January 2025
Subject: Members' Code of Conduct	Public
Which outcomes in the City Corporation's Corporate Plan does this proposal aim to impact directly?	
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 proposals for a new Members' Code of Conduct have already been the subject of lengthy reporting and consultation. This report is solely concerned with the latest amendments made following the report to your Committee in September 2024 and the meeting of the informal Court in November. These amendments concern the registration of additional non-pecuniary interests and the requirement to co-operate with any investigation or determination. The latest version of the draft Code is appended for approval. Once your Committee is content with the text it will need to go to the Court of Common Council for formal adoption. A new Code of Conduct will need to be adopted at the next Court meeting in March 2025 if it is to come into force following the elections and in time for the start of the new municipal year.

Recommendation(s)

Members are asked:

- To approve the draft Code of Conduct at Appendix 1 for onward submission to the Court of Common Council.

Main Report

Background

1. The proposals for a new Members' Code of Conduct are based on the more modern and illustrative drafting of the Local Government Association Model Councillor Code of Conduct ("the LGA Code"), combined with some of the City specific elements from the Corporation's current Code. These proposals have been the subject of lengthy consideration including reports to the Civic Affairs Sub-Committee, the Member Development and Standards Sub-Committee, a consultation involving all elected Members, co-opted Members and Independent Persons, as well as discussion at two

informal Court of Common Council meetings. This report is solely concerned with the latest amendments made following the report to your Committee in September 2024. Earlier discussions are not reproduced here but can be accessed via the background papers.

Latest changes

Registration of additional non-pecuniary interests – Appendix B Table 2 of the draft Code

2. Having considered the consultation responses the Member Development and Standards Sub-Committee previously recommended to your Committee in September that, in addition to registering membership of the Freemasons, Members should be separately required to register membership of Guildhall Lodge, as a Club or Society active in the City of London. Rather than amend the draft Code itself, their preferred option was to clarify this in the Guidance, when it was next updated
3. Whilst your Committee were supportive of a requirement to register membership of Guildhall Lodge, Members considered that there should be a specific reference in the Code to this effect. However, there was also support for the general principle of wider transparency and concern about singling out one organisation over any other. It was therefore resolved that Members should (where relevant) disclose their membership of a local branch of any larger organisation that must be registered.
4. The wording highlighted was accordingly added to Appendix B Table 2 of the draft Code and circulated to all Members ahead of the informal Court in November:

Club or Society active in the City of London or which relates to any functions of the Corporation (including any local branch of a Body in the subsequent categories)

This wording was supported at the informal Court although there was some debate about the interpretation of a “local branch” in this context and whether it should be explicitly restricted to mean a branch located in the City of London or interpreted more widely.

5. As drafted, this would mostly catch local branches operating within the City of London, under the first limb of the paragraph. However, under the second limb, this could also include, for example, a local branch of a national charity that is active in relation to one of the open spaces managed by the Corporation outside the City, or a local political party or association that has expressed views on a Corporation development outside the Square Mile. If Members consider this wording to be too uncertain then “City of London branch” could be substituted for “local branch” in the final version.
6. It is not recommended that Members should be required to register their membership of a local branch that is located outside of the City of London and whose activities are unrelated to any functions of the Corporation. Whilst section 28(2) of the Localism Act 2011 (“the Act”) requires the Corporation to include any provision that it considers appropriate in respect of the registration and disclosure of interests, this is in the context of interests that might give rise to a potential conflict and thereby impact on the decision-making process. The general requirement on Members, as set out in paragraph 1 of Appendix B to the draft Code, is to register any interest which they consider should be

included if they are fulfil their duty to act in conformity with the Seven Principles of Public Life.

7. 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.
8. This doesn't prevent any Member from voluntarily disclosing additional interests where they wish to do so under section 30(4) of the Act.

Requirement to co-operate with any investigation or determination – C8.2 of the draft Code

9. The other amendment concerns paragraph C8.2 in the LGA Code, which requires Members to co-operate with any Code of Conduct investigation and/or determination. Having considered the consultation responses the Member Development and Standards Sub-Committee previously recommended that this was a reasonable requirement, given the Corporation's duty to promote and maintain high standards of conduct, and the individual responsibility of Members to comply with the Nolan Principles. However, it was acknowledged that some Members had historically chosen not to participate due to their concerns over the process. There were also reservations about a Member being subject to a further complaint for failing to co-operate.
10. A Member of your Committee expressed further concerns about this paragraph at the September meeting and it was resolved to defer this matter until a further discussion had taken place at the informal Court. At that meeting the Member repeated his concerns that this provision in the LGA Code went against the tenets of English law that a person should be presumed innocent until proven guilty and should have the right not to say anything or participate in proceedings. He also expressed a concern that paragraph C8.2 did not appear to enable a decision to be reached regardless of participation.
11. The Member therefore proposed that paragraph C8.2 should be deleted and that additional text should be added to C8 to the effect that, "As a Member the Code of Conduct applies to me, and whether I participate or not, outcomes of properly constituted investigations and determinations will bind me". Members at the informal Court were supportive of the proposed amendment.
12. As Members favour the removal of the LGA's suggested co-operation provision, one option would be to simply delete paragraph C8.2 without adding any replacement text. It is already the case that the Code of Conduct automatically applies to all Members upon taking office. Under section 27 of the Act the Corporation must promote and maintain high standards of conduct by Members and, in discharging that duty, must adopt a Code dealing with the conduct that is expected of Members when they are acting in that capacity. Members are also already bound by the outcome of any Code of Conduct proceedings whether they participate or not. Under section 28(6) of the Act the

Corporation must have in place arrangements under which allegations can be investigated and decisions on allegations can be made.

13. However, if Members think it would be helpful, in terms of highlighting any differences with the LGA Code, the following text could be substituted at paragraph C8.2:

C8.2 I am bound by any Code of Conduct investigation and/or determination whether I choose to participate in that process or not.

It is not recommended that this wording should be caveated in terms of “properly constituted investigations and determinations” given that Members should not undermine public trust in the Corporation or its governance (paragraph 33 of the draft Code). The Corporation’s Complaints Procedure, that sits under the Code of Conduct, has been approved by the Court of Common Council and is publicly available. Under section 28(4) of the Act a failure to comply with the Code of Conduct is not to be dealt with otherwise than in accordance with those arrangements. One of the grounds for appeal under the Complaints Procedure is a failure to follow due process. The Court of Common Council is in any event the final arbiter of whether there has been a breach of the Code and any appropriate sanction. Section 28(4) of the Act also provides that a decision is not invalidated just because something that occurred in the process of making the decision involved a failure to comply with the Code.

Next steps

14. The draft Code as amended is attached at Appendix 1 for approval. Once your Committee is content with the text of the draft Code it can be presented to the Court of Common Council for formal adoption. A new Code of Conduct will need to be adopted at the next Court meeting in March 2025 if it is to come into force following the elections and in time for the start of the new municipal year.

Conclusion

15. Following further feedback the draft Code of Conduct has been amended to make it clear that Members should (where relevant) also disclose their membership of a local branch of a larger organisation. The requirement to co-operate with any Code of Conduct investigation and/or determination has also been removed. Once your Committee is content with the text it will need to be considered by the Court of Common Council before it can be formally adopted.

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Appendices

Appendix 1 – Draft Code of Conduct

Background papers

Report to the Civic Affairs Sub-Committee 11 October 2022

Report to the Civic Affairs Sub-Committee 6 December 2022

Report to the Civic Affairs Sub-Committee 31 March 2023

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

Report to the Member Development and Standards Sub-Committee 17 July 2024

Report to the Policy and Resources Committee 26 September 2024