

**Committee: FULL COUNCIL**

**Date: 17 May 2022**

**Title: Code of Conduct**

**Purpose of Report**

For members to consider the introduction of the proposed Code of Conduct

**Recommendation:**

Members resolve to adopt the proposed Voluntary Code of Conduct for Ilminster Town Council

**Background**

1. The Town Council's existing Code of Conduct was introduced in 2012. The Localism Act of 2011 introduced arrangements to regulate the conduct of members of local councils, the registration and disclosure of certain interests and how complaints about how their conduct are handled.<sup>1</sup>
2. There was a requirement that all councils should adopt its own Code of Conduct which members should adhere to when discharging their duties in an official capacity. members are required to promote and maintain high standards of conduct.<sup>2</sup>
3. It was required that the Code should be consistent with the 7 Nolan Principles of standards in public life. These principles being;
  - Selflessness,
  - Integrity,
  - Objectivity,
  - Accountability,
  - Openness,
  - Honesty
  - Leadership
4. The code should also contain provisions which the authority considers appropriate in respect of the registration and disclosure of pecuniary interests and interests other than pecuniary interests.<sup>3</sup>

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<sup>1</sup> The statutory provisions are contained in sections 26-34 of the 2011 Act and Schedule 4.

<sup>2</sup> S.27(1), s.27(2)

<sup>3</sup> Sections 28 (1) and (2)

5. There were to be no statutory sanctions such as suspension or disqualification that could be applied to elected councillors. As a result of this there have been numerous documented cases of councillors around the country falling short of the expected required standards, but it did mean that there were no suitable sanctions to apply when they have been found guilty of breaches of their own council's codes of conduct.
6. One of the by-products of this has been a failure of councils to attract quality candidates when vacancies have arisen. The code has not been reviewed since 2016.
7. In January 2019 the Committee for Standards in Public Life published a report that had been long overdue. This reported on ethical standards and made several recommendations. Some these recommendations involved changes to legislation whilst others could be carried out by local authorities.
8. Chapter 5 of the report specifically refers to the Local Government Association (LGA) creating an updated model Code of Conduct and this was published in December 2020 by the LGA.
9. The Government responded to the report in March 2022 but has not made any current plans to make the legislative changes recommended and so as such the 2011 Act remains in place.
10. As a result of the publication of the LGA Model Code of Conduct NALC withdrew its own Model Code of Conduct.
11. Within the 2011 Act it states that a relevant authority's function of adopting, revising, or replacing a code of conduct may be discharged only by the authority, not by a committee or officer.<sup>4</sup> A relevant authority must publicise its adoption, revision, or replacement of a code of conduct in such manner as it considers is likely to bring the adoption, revision, or replacement of the code of conduct to the attention of persons who live in its area.<sup>5</sup>
12. Subject to the provisions referred to in paragraphs 3 and 4 above, Ilminster Town Council is free to decide the form and content of the new code of conduct that it adopts.
13. The Act provides that a parish council may adopt the same code of conduct adopted by its principal authority.<sup>6</sup> Ilminster Town Council's Principal Council is currently South Somerset District Council and this will change to the new Unitary Authority, Somerset Council in 2023.

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<sup>4</sup> s.28(13)

<sup>5</sup> s.28(12)

<sup>6</sup>

14. The principal authority is exclusively responsible for receiving, investigating and deciding code of conduct complaints which relate to the members of parish councils in their area.
15. They are required to have in place arrangements to investigate and determine allegations that a member of a parish council in its area has failed to comply with their council's code of conduct.<sup>7</sup>
16. Except for the appointment and role of at least one independent person, (see paragraph 20 below), the 2011 Act does not prescribe the arrangements that principal authorities must have in place for the investigation and determination of code of conduct complaints. A principal authority may delegate the discharge of such functions to a committee or officers pursuant to s. 101(1) of the Local Government Act 1972 (the 1972 Act).
17. A committee with responsibility for investigating and determining code of conduct matters would be appointed pursuant to s.102 of the 1972 Act. As with any committee of a principal authority, it will be subject to the rules for proportional representation of different political groups set out in ss.15–17 of the Local Government and Housing Act 1989 (unless the whole council votes to suspend the proportionality rules for that committee).
18. As such, a principal authority (SSDC) committee is not required to include in its membership any members of Ilminster Town Council. A principal authority may arrange for its Monitoring Officer to have certain responsibilities relating to the investigation of a code of conduct complaint or deciding whether a complaint that it receives merits being investigated.
19. The 2011 Act does not give a principal authority express power to undertake investigations or to conduct hearings (any such action may be implied). Similarly, it has no express powers to require access to documents and information or to require members or others to attend interviews/give evidence, or to require the member or others to attend a hearing.
20. A principal authority must appoint at least one independent person (s.28 (7)).<sup>8</sup>The views of the independent person must be sought, and their views are considered before a principal authority takes a decision on a complaint it has decided to investigate. The views of the independent person may also be sought by the principal authority in other circumstances. The views of the independent person may also be sought by the member of the parish council who is the subject of an allegation for failure to comply with their authority's code of conduct.
21. Pursuant to s.28(8), an independent person cannot be a member, co-opted member, or an officer of the principal authority or of any parish council within the

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<sup>7</sup> Sections.28(6) and (9)

<sup>8</sup> Section 28 (7).

principal authority's area or a close friend or relative of such person. In addition, a person cannot be an independent person if, during the five years before their appointment, they have been a member or an officer of the principal authority or of any parish council within the principal authority's area.

22. If SSDC decides that a member(s) of Ilminster Town Council has breached its code of conduct, it cannot take action directly against that/those member of the parish council.<sup>9</sup>
23. SSDC's powers are limited to censuring them subject to making recommendations that the Ilminster Town Council takes a course of action in respect of the member. Although any such recommendation is not binding SSDC may recommend, for example, that the Town Council removes the member(s) from a committee or that it asks its member(s) to attend training or to apologise.
24. It should be noted that any Ilminster Town Council decision would not be invalidated because 'something that occurred in the process of making the decision involved a failure to comply with the code.'<sup>10</sup>

## **REPORT**

25. In preparation for the new administration taking up office the Town Clerk produced a draft "Ilminster Code of Conduct" which was circulated to all sitting members on the 6 April 2022 for their comments. In the email it was explained that the draft code took into account variations that took into account ITC's previous policies, discussions with members, listening to comments by members over the past 12 months in meetings and looking at other policies developed in similar Town Councils.
26. The proposed Code of Conduct is attached to this report as **Appendix 15A**
27. On the 14 April an email was received from the Monitoring Officers of all the Somerset District Councils as well as Justin Robinson, CEO of SALC. This email contained the proposed Code of Conduct that the District Council's intend to adopt and which they have made available for towns and Parishes to consider. It too was based upon the Model that has been put forward by the LGA.
28. This was forwarded on the same day to members along with a further version of the Draft Ilminster Code. The version from the District Council's was annotated by myself as there were areas that gave rise to concern.
29. At a meeting of Town and Parish Clerk's that takes place on a fortnightly basis to consider the current unitary progress, an opportunity was afforded to raise some

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<sup>9</sup> Section.28 (11)

<sup>10</sup> Section 28 (4)

of the concerns that existed around the Somerset version of the Code of Conduct. Following this a further version was sent out that attempted to address some of the concerns.

30. Having looked further at the proposed Code of Conduct from the District Council's it does still remain too generic. The code being brought to you is more specific and allows for greater scrutiny in line with the Nolan Principles. Their proposed Code of Conduct is attached as **Appendix 15B**.
31. The model code is similar to the proposed Ilminster code in many ways, but there are also differences, the main being outlined below:
  - Introduction – the model code is more generic and references the LGA, whereas our code would be more specific to the council and the relevant legislation
  - Interests – information about registering interests, participating in a meeting where a member has an interest, and disclosure of interests is included as an appendix and should be incorporated as such
  - Dispensations – practical guidance about how members should apply for a dispensation is in our existing code and should be added into the model
  - Sanctions and voluntary code – sanctions are available if a councillor breaches the code but are not mentioned in the model and should be included. This would allow the council to adopt a voluntary code. As stated the statutory sanctions are very limited introducing voluntary ones does send a strong message of agreement and alignment to the Nolan Principles.
  - Corruption – this is not in the model and should be included
  - Use of financial resources – this is not in the model and should be included
  - Relationships – this is not in the model and should be included
  - Employment matters – this is not in the model and should be included
32. When considering the Model Code that is provided by the principal authorities there are aspects that whilst not enforceable under any statutory provision do require members to act in a manner that reflects the Nolan Principles with outcomes that are punitive
33. The proposed code does provide additional clarity and information over what is acceptable and what is not acceptable

34. The investigative process into breaches of the Code of Conduct is not altered. The findings as to whether a breach has occurred will be judged by the Monitoring Officer or an independently appointed individual. They will still report to the council their findings and issue the sanctions that they can. It would then be for this council to decide if it wishes to apply further sanctions based on the voluntary ones proposed.
35. One can argue that because they are not enforceable legally that there is no point having voluntary sanctions. The counter argument to this is that a member who has been judged to be in breach of the Code of Conduct and who then fails to accept the sanction that is applied by his/her own peers will be judged accordingly at the ballot box.
36. It is suggested members adopt the new LGA model code with the amendments and additions that are highlighted in order to further strengthen it.

**Mark Tredwin  
Town Clerk  
May 2022**