

Appendix 1

Code of Conduct for Local Government Employees

Consultation Questionnaire

February 2020

Background

This paper seeks feedback on the amendments to the revised Code of Conduct, which was developed by a Working Group comprising representatives from the Councils, NIHE, the Department for Communities and the Trade Unions.

The amendments to the Code have been made:

- to take account of best practice
- following a review of examples of similar Codes of Conduct in other public sector bodies
- to address issues which Councils had reported in operating the current Code.

When the consultation closes, the Working Group will meet to consider the responses received. The final amended Code of Conduct for Local Government Employees will then be approved by the Commission before being issued in September 2020 as a statutory recommendation to Councils for implementation by 1st October 2020.

General

Do you have any comments on the Code of Conduct in general?

There are two issues that could be emphasised more in the Code.

1. The code of conduct is clear in the requirement for employees to declare interests at the earliest opportunity. However, it would be helpful if the Code emphasised that it is for the Council to decide whether a potential conflict of interest exists, and to take appropriate action – historically the tendency has been for employees to simply make a declaration (normally when an issue has been brought to their attention). In general, a form is completed and that is the extent of the action taken, for the most part.
2. The Code should explicitly state that Council's need to ensure that supporting guidance and policies for managing conflicts of interest and gifts and hospitality

are up to date, clearly communicated and well understood and that they are vitally important in underpinning the Code.

The links provide a practical, more modern and user-friendly approach, however might there be an issue with “future-proofing” a hyperlink to the NIAO guidance?

Section 1 - 3 Introduction, Status and Framework of the Code

Do you have any comments on the Introduction, Status and Framework of the Code?

Should the National Agreement for Craft Workers also be referenced?

Belfast City Council agrees that the final amended Code of Conduct for Local Government Employees be approved by the Commission before being issued as a statutory recommendation to Councils for implementation. However, it should remain the case that individual councils are free to decide upon specific arrangements for the implementation of the code within their respective organisations.

It is our understanding that the LGSC NI has developed a Management and Dissolution Plan to facilitate the continuation of the Commission’s work, in anticipation of the necessary Dissolution Order which will wind up the Commission. It would be helpful to have clarity on the impact of this plan upon the current and future status of the model Code as a “statutory recommendation.”

4.1 Standards of Behaviour, Impartiality and Conflicts of Interest

Do you have any comments?

4.1 (Page 8) - Code states ‘Employees will be expected, without fear of recrimination, to bring to the attention of the appropriate level of management any deficiency in the provision of service’

It would be clearer if this also included a reference to illegal or unethical conduct rather than simply a deficiency in service provision.

Page 8 - Code refers to organisations Social Media Policies which is helpful – should it also refer specifically to Computer Use Policies as well?

Page 9 – ‘Employees should not use any information obtained in the course of their employment for personal gain or benefit, nor should they pass it on to others who might use it in such a way’.

There is reference to personal gain but no indication / statement that this could be a potentially criminal / fraudulent act.

Page 8

“Employees must complete the Register of Interests in line with the Council policy on Conflict of Interests and must declare any new interests to the Designated Manager as soon as they become aware of them. They also have a responsibility to advise their new line manager if they change their role/position in the Council. For further information, employees should also refer to the NIAO 'Conflicts of Interest: A Good Practice Guide'.”

Belfast City Council currently asks senior managers to complete and keep up to date an annual declaration of interests and that remaining employees declare any interests on an ad hoc basis in line with the Council policy on Conflict of Interests. Does the above paragraph introduce a requirement for all staff to complete a register of interests (even if they do not have any)? Could this sentence be changed to: “Employees must adhere to the requirements regarding declaration of interests which are set out in the Council policy on Conflict of Interests”?

It might be worth defining the different types of conflicts of interest, for example:

- An **actual** conflict of interest involves a conflict between a public official’s duties and responsibilities in serving the public interest and the public official’s private interests.
- A **perceived** conflict of interest is where it appears that a public official’s private interests could improperly influence the performance of their duties – whether or not this is in fact the case.
- A **potential** conflict of interest is where a public official has private interests that could conflict with their official duties in the future.

The NIAO Conflict of Interest A Good Practice Guide defines actual, perceived and potential referring to this document: Managing Conflicts of Interest in the Public Sector toolkit, Independent Commission Against Corruption and Crime and Misconduct Commission (Queensland), Sydney and Brisbane, 2004

4.2 Disclosure of Information

Do you have any comments?

Page 9

Paragraph 3: In addition to the Freedom of Information Act, the Environmental Information Regulations 2004 give a right of access to information (environmental) held. Therefore, consider adding the Environmental Information Regulations 2004 to the list of legislation in Appendix 1, paragraph 4.

Paragraph 3: Although the requirement to have a publication scheme is set out in the FOI Act, the right of access by an applicant making a request for information is a separate mechanism provided in the Act.

Paragraph 5: personal data and special category personal data are defined in the GDPR and DPA 2018 and must be processed in accordance with this legislation, which allows for disclosure of same in certain circumstances.

4.3 Political Neutrality

Do you have any comments?

Page 10

Paragraph 4:

“An employee of a council cannot stand or be elected as a councillor (Local Government Act (NI) 1972, Section 4).”

Our understanding is that an employee may stand and be elected as a councillor in a council different to that they are employed by (provided they do not hold one of the prescribed offices or employments outlined in the Local Government (Disqualification) (Prescribed Offices and Employments) Regulations (Northern Ireland) 2014.

We recommend that the text is changed to reflect the provisions of the 2014 regulations.

Paragraph 5:

Specifying that conflicts of interest can arise when participating in other political activity would be useful – for example, canvassing; distributing literature. It is suggested that the Code should require that employees must declare this planned activity and seek permission before proceeding.

4.4 Potential Conflict of Interest Situations

Do you have any comments?

In terms of layout, it might be useful to have a dedicated section on Conflicts of Interest with relevant sub-sections for clarity.

Is there a need to highlight here that conflicts of interests can be indirect i.e. relate to spouse / family member etc. to align with the mention in the model declaration?

Should there be some explanation of the need to declare pecuniary interests as per Section 46 of Local Government Act (NI) 1972?

Page 11

Paragraph 2: “...they should not approach or attempt to influence councillors in relation to personal or contractual matters, for example, a potential regrading of their post.”

Suggest changing it to: “should not attempt to influence councillors in relation to a personal employment matter”, as it conflicts with what is set out in paragraph 5:

"This does not compromise an employee's rights as a ratepayer to access and/or question the provision of Council services to them through open and transparent Council procedures, for example, in relation to a planning or refuse collection issue".

Paragraph 3: *"Employees should not report any issues or concerns regarding the operation of the council to a councillor. These should be raised with their line manager, or by following the whistleblowing procedures, if appropriate."*

It is suggested that this should be reworded to:

"Employees should not report any issues or concerns regarding the operation of the council to a councillor which have come to their attention in the course of carrying out their duties. These should be raised with their line manager, or by following the whistleblowing procedures, if appropriate."

To alleviate any concerns that an officer's entitlement as a ratepayer to access their own elected representative is compromised, it is suggested that Paragraph 5 should follow immediately.

Although the Local Government Employee and Councillor Working Relationship Protocol is not within the scope of this review, it is the position of BCC that this protocol would benefit from further review, as it has now been in place for five years.

Page 12

Paragraph 1: suggested rewording:

"This may require reasonable adjustments for effective communication with people with disabilities in accordance with the provisions of the Disability Discrimination Act 1995. In addition, the language needs of someone whose first language is not English need to be considered."

Page 12

Paragraph 2

"Employees also have a right not to be verbally or physically abused by the community and service users. Any incidents should be reported immediately to the employee's line manager."

While the intention of this provision is understood and welcomed, it appears to be outside the scope of the Code of Conduct which deals with standards of behaviour for employees.

4.5 Appointments and other Employment Matters

Do you have any comments?

Page 14 and Appendix 1

The wording referring to the LGSC Code of Procedures on R&S is still the same but the definition of "family relationships" is now updated to include co-habiting partners, adopted relatives, step relatives etc., which is better, more modern.

However, often it's the definition of "personal relationship" that causes the problems though. While the wording on "personal relationships" has been updated to specifically include sexual/romantic relationships and business/commercial/financial relationships - which is better - it still just refers to friendships. Might it be useful to incorporate a definition of friendship?

NB The BCC Conflict of Interest Policy defines "friend" as follows:
"someone with whom the employee has a very close and regular social alliance over and above what would be considered as a friendly, working relationship."

4.6 Outside Commitments

Do you have any comments?

Does this section cover the scenario where employees start their own business – if so, should that be made clearer?

This section indicates that a person **is not** required to seek approval from the council to have a second job.

Appendix 1, page 20 goes on to include a section of the Civil Service Handbook relating to additional employment which says it has been adapted for local government. The adopted paragraph includes the following line "if an employee wishes to undertake any work (paid or unpaid) with another employer they must first obtain permission from their line manager/the Council"

We would seek clarification whether the first statement is in error and permission **is** required to have a second job or business interest or if permission **is not** required unless it relates to one of the activities listed, then the statement in Appendix 1 as adopted from the civil service would require rewording.

This section could be clarified to distinguish between actual, potential and perceived conflicts of interest and that any staff declaration register should capture this.

It should be clarified that where any external business, appointment or employment is considered to be an actual conflict with the interests of the council (as set out in the three bullet points), then it should not proceed whilst the individual is the subject of an employment contract with the council.

It is the view of BCC that employees should be required to declare any second employment – not only for the purposes of the Code of Conduct, but for assurance on other compliance matters in respect of the Working Time Directive.

4.7 Personal Interests

Do you have any comments?

4.8 Equality Issues

Do you have any comments?

4.9 Separation of Roles During Procurement

Do you have any comments?

4.10 Fraud and Corruption

Do you have any comments?

Page 16.
Paragraph 4.10 would potentially benefit from making specific reference to the Fraud Act 2006 and 3 main provisions therein i.e.

- ***By false representation:*** It is an offence to commit fraud by dishonestly making a false representation to make a gain for yourself or another, or to cause loss to another, or to expose them to a risk of loss.
- ***By failing to disclose information:*** It is an offence to commit fraud by failing to disclose information to another person where there is a legal duty to disclose information.
- ***By abuse of position:*** examples of abuse of position may include, for example, an employee who gives contracts or discounts to friends and family.

This would help distinguish between Fraud and Bribery (which is referred to in slightly more detail).

Reference is made to expenses, travelling and mileage expenses – the inclusion of overtime should also be considered.

4.11 Use of Financial and other Council Resources

Do you have any comments?

Page 17

4.11 states: 'An employee who, in their role in the Council, is responsible for a significant budget and becomes insolvent or bankrupt, must inform their line manager promptly'. The following clarification is suggested "An officer who is **employed in a role that involves dealing with financial matters or in a regulated profession (e.g. law, accountancy, financial services), and who becomes insolvent or bankrupt, must inform their line manager promptly.**"

4.12 Hospitality and Gifts

Do you have any comments?

Page 17

We welcome the clarity provided by the addition of these sentences.

- "If an employee is in any doubt about the propriety of accepting any hospitality, he/she should take advice from their line manager."
- "Offers of hospitality which are declined should also be recorded in the Gifts and Hospitality register."
- "any offers of hospitality are reported and agreed by the employee's line manager in advance,"

4.12 – states 'Employees should not accept personal gifts from contractors, members of the public and outside suppliers....' – might be helpful if this also included organisations or groups in receipt of funding from the council.

4.13 Sponsorship – Giving and Receiving

Do you have any comments?

4.14 Whistleblowing

Do you have any comments?

Page 18

4.14 – states 'If an employee becomes aware of activities which he/she believes to be illegal, improper, unethical or otherwise inconsistent with this Code, the employee should report the matter, acting in accordance with the employee's rights under The Public Interest Disclosure (Northern Ireland) Order 1998...'

This paragraph could also include the term dangerous (which might include serious H&S matters).

It also reads slightly at odds with paragraph 2 section 4.1 (pg8) which signposts the reader to whistleblowing in relation to a 'deficiency in service provision' – see comments above on this point.

4.14 Paragraph 2

“Any employee raising such concerns need have no fear of recrimination. He/she will be properly supported and his/her identity will not be revealed.”

This language “over-commits” in terms of what can be guaranteed by Councils. Local Whistle-blowing policies are unlikely to give absolute guarantees of anonymity of a whistle-blower. These are matters that will have to be managed on a case-by-case basis at local level.

4.15 Breaches of the Code of Conduct

Do you have any comments?

Is it worth highlighting that failure to comply with the code, in addition to disciplinary action, could also lead to loss of employment and “*referral of the matter to the PSNI*” which could lead to criminal prosecution?

Appendix 1 Legal and Other Provisions

Do you have any comments?

See above for Section 4.6

Section 1 and 4

These should refer to the General Data Protection Regulation 2016. (It was made in 2016 and came into force in 2018.)

Section 2

See also comment at 4.5,

We note that the term ‘dependents’ has been removed and we would seek clarification that dependents are included within the meaning of the following language:

“For the avoidance of doubt, a personal relationship for the purposes of the Code of Conduct includes: a family relationship other than that specified above;”

The extract from the NI Civil Service conflict of interest guidelines states that “If an employee wishes to undertake any work (paid or unpaid) with another employer they must first obtain permission from their line manager/the Council.” This is not aligned to process outlined in 4.6 Outside Commitments?

See also comments at section 4.6

Paragraph 4

In light of comments re Section 4.2 above, you may also wish to add the Environmental Information Regulations 2004 to the list of legislation.

Appendix 2 Guidance on Participating in Political Activity

The working group are seeking views on whether the Code of Conduct should contain guidance on council employees participating in political activity depending on their role in the council, for example canvassing for a political party, expressing views on political matters in letters to a newspaper, or in books, articles or leaflets.

Do you have any views?

This might need more detailed consideration and it may be more useful to leave it silent so each case can be decided on its own merits and allow a degree of common sense.

The code accepts at the outset that staff are entitled to hold political opinions and there is already provision within the social media guidelines in terms of posting opinions which may be in conflict with the role of the employee and the Council.

It would be extremely difficult to define a set of circumstances or roles within which an employee could or could not participate in political activity. If specific employees were prohibited from engaging in any political activity or opinion then this could be subject to challenge.

Paragraph 4.3 is wide enough to allow for some discretion and a case by case basis.

Please see comments at 4.3 above.

Appendix 3 Model Declaration of Interest Form

Do you have any comments?

The addition of direct and indirect interests is welcomed.

It might be helpful to include a section to highlight if the declaration details would reveal any special category data (under the Data Protection Act 2018) so that this is clear (as it requires higher level of protection and might be exempt from disclosure).

Should there be an explicit section or subsection to highlight any pecuniary interest as per Section 46 of Local Government Act (NI) 1972.

The template should indicate whether the declaration of interest is potential, actual or perceived. See comments at 4.6.

This form would also need the organisation to add their own privacy notice as it is collecting and processing personal data.

It is unclear why membership of a professional body should be declared – this requirement is likely to impact on a significant number of employees unnecessarily.

Should there be a requirement on Councils to ensure every employee considers conflicts of interest and completes a regular declaration of interest template? Currently in BCC only senior managers are required to complete an annual declaration but it is accepted that all employees could potentially find themselves in a conflict of interest situation.

Please return this questionnaire to lorna.parsons@lgsc.org.uk by Friday 22nd May 2020.