

16 July 2024		ITEM: 5
Standards Committee		
Ethical Framework Update		
Wards and communities affected: All	Key Decision: Not applicable	
Report of: Daniel Fenwick, Executive Director, Corporate Services/Monitoring Officer		
Accountable Assistant Director: n/a		
Accountable Director: Daniel Fenwick, Executive Director, Corporate Services/Monitoring Officer		
This report is Part Exempt. Appendix 3 is exempt by virtue of paragraph 1 (information relating to any individual) of the Access to Information Procedure Rules set out in the Constitution and Schedule 12A of the Local Government Act 1972 as amended. In all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosure.		
Version: Final Version		

Executive Summary

The Council's Code of Conduct for Councillors set out obligations, which are the minimum standards of conduct required of Councillors. The Council's Members' Code of Conduct requires Members to ensure that any gifts and hospitality offered to them are recorded in a register which is published along with the Members' register of interests on the Council's website. This report provides information on an audit carried out on gifts and hospitality declared by Members.

A Code of Conduct training session was undertaken by the Monitoring Officer in May 2024 where 20 of the 49 members attended.

This report set out gifts and hospitality declared by the Leader and Councillors for the period May 2023 to May 2024. There have been two declarations of receipts of gifts and hospitality is set out in Appendix 1.

This report also sets out the declaration of interest declared at meetings for the period May 2023 to May 2024 is set out in Appendix 2.

This report also updates the Committee on complaints received since 23 November 2023 are set out in Exempt Appendix 3.

Version Control (delete as appropriate)

Version 1 - First draft ready for DMT, SLT and Commissioner input; **Version 2** - Second Draft ready for Portfolio Holder, Leader and other Member Input; **Version 3** - Third draft for any further comments; **Version Committee** – Draft ready for submission to public committee; **Version Cabinet** – Final version ready for Cabinet/Executive decision

1. Recommendation(s)

For the reasons set out in the report, the Standard Committee is asked to:

- 1.1 Note the list of gifts and hospitalities declared for the period May 2023 to May 2024 and comment on the process for great transparency and accountability for gifts and hospitality set out in paragraph 2.6.
- 1.2 Note the declaration of interests made at meetings for the period May 2023 to 2024.
- 1.3 Note the update on the Code of Conduct complaints received.

2. Introduction and Background

- 2.1 Section 27 of the Localism Act 2011 requires the Council to promote and maintain high standards of ethical behaviour by Members and Co-opted Members of the Council. In discharging this duty Thurrock Council has adopted a Code of Conduct for Members and Co-opted Members, the code is set out in Chapter 7, Part 3 of the Council's constitution.
- 2.2 The Code of Conduct applies to Members and Co-opted Members whenever they are acting in the capacity of members.
- 2.3 The Members' Code of Conduct sets out specific obligations in relation to the standards of conduct required of all Members and co-opted Members of the Council.

Declarations of interests

- 2.4 The Code of Conduct places a requirement on Members to register, disclose and not participate in any matter in which a member has a Disclosable Pecuniary Interest as set out in Chapter 7 of the Localism Act 2011, and prescribed Regulations.
- 2.5 Appendix B of the Code of Conduct sets out the requirements on registering and disclosing interests, members must:
 - Ensure that their register of interests is kept up to date and within 28 days of becoming aware of any new interest, or change to a registered interest, notify the Monitoring in writing.
 - Where a matter arises at a meeting which relates any of their disclosable pecuniary interests, make a verbal disclosure of the existence and nature of the interest, not participate in any discussion or vote on the matter, and must not remain in the room unless a member has been granted a dispensation.
- 2.6 The Code of Conduct also requires Members to make a verbal disclosure of the existence of a "Other Registrable interest" or "Non-Registrable Interest" at any meeting at which they are present in any item of business to be considered, before the consideration of the item of business or as soon as the interest becomes apparent.

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- 2.7 The declarations of interest declared at meetings are set out for the period May 2023 to May 2024, as this is the first report setting out this information. Advice and guidance on declaration of interests are included on agendas for Members information.

Gifts and Hospitality

- 2.8 The Code of Conduct also places an obligation on Members not to accept gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence on the Member's part to show favour from persons seeking to acquire, develop or do business with the Council, or from persons who may apply to the Council for any permission, licence or other significant advantage.
- 2.9 In order to protect your position and the reputation of the local authority, you should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness, in which case you could accept it but must ensure it is publicly registered. However, you do not need to register gifts and hospitality which are not related to your role as a councillor, such as Christmas gifts from your friends and family. It is also important to note that it is appropriate to accept normal expenses and hospitality associated with your duties as a councillor. If you are unsure, do contact your Monitoring Officer for guidance.
- 2.10 However, there may be times when such a refusal may be difficult if it is seen as rudeness, in which case Members could accept it but must ensure it is publicly registered. The Code provides that Members must register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of the date it was received. The Monitoring Officer places their notification on a public register of gifts and hospitality.
- 2.11 It is also a requirement of the Code for Members to register with the Monitoring Officer any significant gift or hospitality that they have been offered but have declined to accept. This helps the Council to identify if there are any patterns and to be aware of who might be seeking to influence the Council.
- 2.12 Registering gifts or hospitality received under the Code does not automatically mean it is appropriate or sensible to accept them. Particular care should be taken in relation to gifts and hospitality offered by current or potential contractors for the Council and also by applicants and others in relation to planning applications.
- 2.13 To ensure that there is greater transparency and accountability, and to create and maintain public confidence in the role of Members and the Council, the gifts and hospitality form for Members will be sent all Members bi-annually and will include a new requirement for Members who have not accepted or been offered any gifts or hospitality to declare a nil return.
- 2.14 An audit of the list of entries made in the register for Members Gifts and Hospitality for May 2023 to May 2024 is attached at Appendix 1.

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2.15 The list of entries show that two Councillors made notifications of gifts and hospitality received on two occasions.

These are summarised as follows:

Year	Type of Entry onto the register
2023	1 Event, 1 Gift
2024	As of May 2024 no notifications received

2.16 The number of registrations is low, and it is for each individual Member to exercise sound judgement to decide whether to accept or refuse any gift or hospitality offered. Training is provided to all Members on the Code of Conduct, which includes gifts and hospitality.

Update on Code of Conduct complaints received

2.17 Appendix 3 of the report provides details of the complaints received since 23 November 2023. Complaints received are given a Unique Reference Number (URN) and Appendix 3 sets out:

- Brief details of the complaint;
- The decisions taken by the Monitoring Officer (in consultation with the Independent Person);
- The current status of complaints.

Update on recent developments

2.18 The Court of Appeal quashed the conviction of Thomas Casserly, the appellant for sending an indecent or grossly offensive communication with the intent to cause distress or anxiety, contrary to Section 1 of the Malicious Communications Act 1988. The communication was an email addressed to a town councillor, Victoria Dominguez-Perez, about a political dispute, questioning her ability to serve as a councillor given her disabilities. Casserly was sentenced to a community order and a five-year restraining order, which restricted his freedom to contact the local councillor. He appealed against the conviction.

2.19 The Court considered the interaction between s 1 of the Malicious Communications Act 1988 and the right to free speech under Article 10 of the European Convention of Human Rights (Article 10).

2.20 The Court of Appeal allowed the appeal and the conviction was quashed. Casserly maintained that his communication was a legitimate expression of his opinion and that he was entitled to express his concerns in accordance with Article 10 especially within the context of holding elected officials accountable.

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2.21 The Court of Appeal held that :

- i. Casserly was in dispute with the Town Council and this email was part of a series of communications between him and Town Councillors. Therefore, it was sent in a political context. Holding politicians to account is an important part of a democratic society;
- ii. When people are expressing themselves in a political context the law expects those who receive the communications to have a thicker skin than those who are ordinary citizens;
- iii. The use of strong language, even that which is offensive, shocking or extremely rude, may not be enough to amount to the offence charged;
- iv. Accordingly, the prosecution had to meet a very high threshold. It would only be possible for the communication to be grossly offensive if, in the jury's judgment, it went well beyond robust scrutiny of an elected councillor in the performance of the role to which she was elected;
- v. It was not enough for the prosecution to prove that the email was likely to have caused distress or anxiety and Casserly either knew it was likely to have that effect or did not give thought to whether it would. What mattered was what was the Casserly's objective(s) in sending the email. The jury had to be sure that at least part of his objective(s) in sending the email was to cause distress or anxiety.

2.22 The case highlights the balance that courts must strike between the rights of individuals to be protected from communications which are likely to cause distress or anxiety and the right to free speech in the context of political expression. The Court of Appeal identified a number of factors as to what constitutes 'grossly offensive' communication when Article 10 is engaged and the specific intent required for conviction under the Malicious Communications Act 1988.

3. Issues, Options and Analysis of Options

Not Applicable.

4. Reasons for Recommendations

- 4.1 To promote and maintain high standards of ethical behaviour for all Councillors.
- 4.2 To create and maintain public confidence in the role of councillors and local government.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 The Independent Person in respect of complaints received as and when required.

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6. Impact on corporate policies, priorities, performance and community impact

6.1 The Members Code of Conduct encourages good conduct and safeguard the public's trust and confidence in the role of councillors, thereby assisting the Council to meet its corporate policies and priorities, as well as maintaining public confidence.

7. Implications

7.1 Financial

Implications verified by: **Rob Chimani**
Accountant
17 April 2024

There are no financial implications arising from this report.

7.2 Legal

Implications verified by: **Gina Clarke**
Governance Lawyer & Deputy Monitoring Officer
22 April 2024

This report has been prepared by the Executive Director for Corporate Services, Monitoring Officer. There are no additional legal comments.

7.3 Diversity and Equality

Implications verified by: **Roxanne Scanlon**
Community Engagement and Project Monitoring Officer
18 May 2024

The Code of Conduct aims to promote and maintain high standards of ethical behaviour for all Councillors. There are no specific diversity or equalities issues arising from this update report.

7.4 Risks

The aim of the requirement to declare declaration of interest and gifts and hospitality register is to guard against the risk of allegations of impropriety by individuals.

7.5 Other Implications (where significant) – i.e., Staff, Health Inequalities, Sustainability, Crime and Disorder, and Impact on Looked After Children

None.

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8. **Background papers used in preparing the report** Council's website Declarations of Interests and Register of Gifts and Hospitality pages for Councillors

None.

9. **Appendices to the report**

Appendix 1 - Gifts and Hospitality Audit

Appendix 2 - Declaration of Interests declared at meetings

Appendix 3 - Members Code of Conduct Complaints – Exempt

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