

Committee: STANDARDS COMMITTEE

Agenda Item

Date: 1 October 2012

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Title: SUGGESTED AMENDMENTS TO THE CODE OF CONDUCT

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Item for decision

Summary

1. This report recommends amendments to the Code of Conduct.

Recommendations

2. That members recommend amendments to the Code of Conduct in the light of the implications of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	None
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. On the 10 August 2012 the Government made the Local Authorities (Executive Arrangements) (Meetings & Access to Information) (England) Regulations 2012 ("the Regulations"). The Regulations were laid before Parliament on the 15 August and came into force on the 10 September. There was no government consultation prior to the Regulations being made.
7. I consider that the previous Access to Information Regulations were generally reasonable. The only concern I had with regard to those regulations was that meetings of the Cabinet which were not engaged in taking key decisions could be held in private. However, in practice this council has never adopted that course. Interpreted literally the Regulations appear to create additional layers of bureaucracy and could hamper the smooth operation of council business.
8. The headlines to the Regulations are:
 - All meetings of the executive must be in public unless dealing with exempt or confidential information.
 - Private meetings (what members will understand from our current constitution as being Part II meetings) can generally only be held if 28 clear days notice is given. A further notice must be issued 5 clear days before the meeting giving details of any representations which have been received as to why the meeting should be held in public and what the response to those representations was. The only exception to this rule is where a private meeting needs to be held urgently and the chairman of the Scrutiny Committee (or in his absence the Chairman of the Council or if there is no current chairman of the council, the Vice-Chairman of the Council) agrees that the meeting is urgent and cannot reasonably be deferred.
 - The requirement for a rolling forward plan has been abolished. Instead 28 days notice of key decisions is required to be given. This rule is subject to general exemptions and in cases of special urgency which are similar to those applying under the previous arrangements.
 - Rules relating to the recording of executive decisions have been expanded. The new regulations require every executive decision to be reduced into writing with reasons, details of alternatives considered and rejected and details of any conflicts of interest required. As most decisions taken by officers under delegated powers are caught by this provision if interpreted literally this would impose a huge burden upon the authority.
 - The rules regarding access to documents by members of the council and the Scrutiny Committee have been changed.
 - The circumstances in which the executive can be challenged for using the urgency procedures or as to whether decisions taken by the executive were key decisions have also been amended.

9. There is some tension between the Regulations and the Localism Act 2011 ("The Act") and other regulations made thereunder.
10. The Act refers to disclosable pecuniary interests, pecuniary interests and non-pecuniary interests. It also contains provisions for dispensations to be granted by local authorities. This Council has delegated the function of granting dispensations to me as Monitoring Officer with the right for a member who is aggrieved at a refusal to grant a dispensation to have my decision reviewed by this Committee.
11. The Regulations refer to conflicts of interest. This term is not defined and therefore presumably has its common-law meaning. It also refers to dispensations being granted by the council's head of paid service but unlike the Act there is no procedure by which dispensations from the head of paid service can be applied for or granted. There is also no explanation as to in what circumstances a dispensation may be necessary and whether a dispensation would enable a member of the executive to speak and/or vote and/or take an executive decision as an individual under delegated authority.
12. As the Regulations do not expressly or impliedly repeal or amend the Act it follows that we appear to have 2 concurrent regimes. The Act and the council's Code of Conduct made thereunder contain provisions with regard to disclosable pecuniary interests, other pecuniary interests and non-pecuniary interests which apply to all members of the council (executive and non-executive) at all times. In addition the Regulations concerning conflicts of interests apply to members of the executive (only) in circumstances where they are taking executive decisions (either as a member of the cabinet or of a sub-committee of the cabinet or as an individual member under delegated powers) or where they are being consulted with regard to an executive decision by another member of the executive or an officer taking such a decision.
13. Where a member of the executive has a disclosable pecuniary interest he or she may not take part in the taking of a decision unless a dispensation has been granted under the Act. I consider that if such a dispensation has been granted a dispensation from the head of paid service becomes unnecessary.
14. If a member of the executive has a pecuniary interest which is not a disclosable pecuniary interest he or she may only take part in the decision making process in circumstances set out in the Code (namely a member of the public is unlikely to regard the member's interest as being so significant as to be likely to prejudice the member's judgement of the public interest or a dispensation has been granted under the Code of Conduct). It is arguable that a dispensation under the Code of Conduct does not circumvent the need for a dispensation from the head of paid service. However as there is no requirement for a member not to take part in the decision making process or to refrain from being involved in consultations on an executive decision where a conflict of interest arises there appears to be little purpose in having 2 separate dispensations. I consider therefore that on balance a dispensation from the head of paid service is not necessary where the member holds a dispensation granted under the Act or under our Code of Conduct. However to

avoid any possibility of challenge the head of paid service has indicated an intention to delegate to me his power to grant dispensations under the Regulations.

15. The current Executive Procedure Rules refer to conflicts of interest in the context of the previous regulations. In that context "conflict of interest" appeared to be synonymous with prejudicial interests and referred to dispensations being granted by the Standards Committee (which then had a statutory power to grant dispensations). The Constitution Task Group met recently to consider necessary amendments to the constitution in the light of the Regulations and these will be reported to Full Council on 2 October 2012. However that Group considered that in the light of the confusion caused by the Regulations the references to "conflicts of interests" contained in the Executive Procedure Rules should be deleted in their entirety and that the issue should be dealt with in the Code of Conduct.
16. I therefore append a copy of the Code of Conduct with suggested amendments to take account of the Regulations.
17. As the Regulations apply only to councils operating executive arrangements they cannot apply to parish and town councils and the amendments to the Code of Conduct will not therefore affect them.

Risk Analysis

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Risk	Likelihood	Impact	Mitigating actions
Unless the Code of Conduct and Procedural Rules are clear executive decisions may be susceptible to legal challenge and individual members of the executive may find themselves the subject of allegations of a breach of the Code of Conduct	4. The constitution is not currently consistent with the legislation. The very short period of time between the regulations being laid before Parliament and coming into effect gave no realistic opportunity for the council to amend its constitution before the	1, providing the council works to the current regulations decisions of the council will not be subject to challenge.	The council amends the Code of Conduct to give effect to the Regulations

	effective date.		
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- 1 = Little or no risk or impact
- 2 = Some risk or impact – action may be necessary.
- 3 = Significant risk or impact – action required
- 4 = Near certainty of risk occurring, catastrophic effect or failure of project.

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■ THE COUNCILLORS' CODE OF CONDUCT

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■ Part 1

■ General Provisions

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1. Introduction and Interpretation

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- This is the code of the conduct expected of members of Uttlesford District Council adopted under s.27 (2) Localism Act 2011. Uttlesford District Council considers that this code viewed as a whole is consistent with the principles contained in s.28 (1) of that Act which are set out in the Appendix to this Code.

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- This Code applies to **you** as a member of your authority. It is your responsibility to comply with the provisions of this Code.

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- In this Code:

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- “body in which the relevant person has a beneficial interest” means a firm in which the relevant person is a partner or a body corporate of which the relevant person is a director, or in the securities of which the relevant person has a beneficial interest

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- “land” excludes an easement, servitude, interest or right in or over land which does not carry with it a right for you or a relevant person (alone or jointly with others) to occupy the land or to receive income

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- “meeting” means any meeting of your authority or of the cabinet or of any committee or sub-committee of your authority or its cabinet or of any joint committees, joint sub-committees, area forums, task groups or working groups.

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- “relevant authority” means the Council of which you are a member

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- “relevant period” means the period of 12 months ending with the day on which you give notification of a disclosable pecuniary interest to the Monitoring Officer

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- “relevant person” means you or your spouse or your civil partner or a person you are living with as if they were your spouse or civil partner

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- “securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society
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2. Scope

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- You must comply with this Code whenever you conduct the business of your authority (which includes the business of the office to which you are elected or appointed) or act, claim to act or give the impression you are acting as a representative of your authority.
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3. General Obligations

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- 3.1. You must treat others with respect.
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- 3.2. You must observe any protocols or codes of practice adopted by your authority.
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- 3.3. You must not:
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 - 3.3.1. do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
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 - 3.3.2. bully any person;
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 - 3.3.3. intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct;
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 - 3.3.4. do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.
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 - 3.3.5. disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where:
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- 3.3.5.1. you have the consent of a person authorised to give it;
 - 3.3.5.2. you are required by law to do so;
 - 3.3.5.3. the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - 3.3.5.4. the disclosure is reasonable and in the public interest; and is made in good faith and in compliance with the reasonable requirements of the authority;
 - 3.3.6. prevent another person from gaining access to information to which that person is entitled by law.
- 3.3.7. conduct yourself in a manner which could be reasonably regarded as bringing your authority or your office into disrepute
- 3.3.8. use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage
- 3.4. You must, when using or authorising the use by others of the resources of your authority:
 - 3.4.1. act in accordance with your authority's reasonable requirements;
 - 3.4.2. ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - 3.4.3. have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
- Part 2**
- Members Interests**
- 4. Disclosable Pecuniary Interests**

4.1. You have a disclosable pecuniary interest in any business of your authority if it is of a description set out in 4.2 below and is an interest of a relevant person and in the case of a relevant person other than yourself you are aware that that other person has the interest

4.2. “Disclosable pecuniary interests” are defined by The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 and are:-

- Employment, office, trade, profession or vocation
- Any employment, office, trade, profession or vocation carried on for profit or gain
- Sponsorship
- Any payment or provision of any financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by you in carrying out your duties as a member or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992
- Contracts
- Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority –
 - a) under which goods or services are to be provided or works are to be executed;

and

b) which has not been fully discharged

- Land
 - Any beneficial interest in land which is within the area of the relevant authority
- Licences
 - Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer
- Corporate tenancies
 - Any tenancy where to your knowledge –
 - a) the landlord is the relevant authority; and
 - b) the tenant is a body in which the relevant person has a beneficial interest
- Securities
 - Any beneficial interest in securities of a body where –
 - a) that body (to your knowledge) has a place of business or land in the area of the relevant authority; and
 - b) either –
 - (i) the total nominal value of the securities exceeds £25000 or one hundredth of the total issued share capital of that body; or
 - (ii) if the share capital of that body is of more than one class, the total

nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class

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5. Other Pecuniary Interests

- You have a pecuniary interest in any business of your authority where either:-
- 5.1 it relates to or is likely to affect any person or body who employs or has appointed you or
- 5.2 a decision in relation to that business might reasonably be regarded as affecting your financial position or the financial position of a related person to a greater extent than the majority of (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision or (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

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6. Non-Pecuniary Interests

- You have a non-pecuniary interest in any business of your authority where either:-
 - 6.1. it relates to or is likely to affect:-
 - 6.1.1. any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority
 - 6.1.2. any body:-
 - 6.1.2.1. exercising functions of a public nature;
 - 6.1.2.2. directed towards charitable purposes; or
 - 6.1.2.3. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

- of which you are a member or in a position of general control or management
- 6.1.3. the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25
- or
- 6.2.a decision in relation to that business might reasonably be regarded as affecting your wellbeing or the wellbeing of a related person to a greater extent than the majority of:-
 - 6.2.1. (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
 - 6.2.2. (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

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7. “Related Persons”

- For the purposes of paragraphs 5.2 and 6.2 “related person” means:-
 - 7.1. a member of your family or any person with whom you have a close association
 - 7.2. any person who employs or has appointed such persons, any firm in which they are a partner or any company of which they are directors
 - 7.3. any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000.00 or one percent of the total issued share capital (whichever is the lower)
 - 7.4. any body of which such persons are a member or in a position of general control or management and to which you are appointed or nominated by your authority
 - 7.5. any body of a type described in paragraph 6.1.2 of which such persons are members or in a position of general control or management

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8. Disclosure of Interests

- 8.1. Subject to paragraph 8.2 where you or a relevant person have a disclosable pecuniary interest, any other pecuniary interest or a non-pecuniary interest in

any business of your authority and you are present at a meeting of your authority at which the business is considered you must disclose to that meeting the existence and the nature of the interest if you are aware or ought reasonably to be aware of it.

8.2. Where you or a relevant person have an interest in any business of your authority which would be disclosable by virtue of paragraph 8.1 but by virtue of paragraph 12 (sensitive interests) details of the interest are not registered in your authority's published register of members' interests you must disclose to the meeting the fact that you have an interest and that the interest is a disclosable pecuniary interest (if that is the case) but need not disclose the nature of the interest to the meeting

8.3. Where you or a relevant person have an interest in any business of your authority which would be disclosable by virtue of paragraph 8.1 and you have made an executive decision in relation to that business you must ensure that any written statement of that decision records the existence and nature of that interest and for the purposes of this paragraph "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under s.22 Local Government Act 2000

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9. Effect of interests upon participation in meetings

9.1. If you have a disclosable pecuniary interest in any business of your authority and are present at a meeting of the authority at which such business is to be considered or is being considered you must:-

9.1.1. disclose the existence and nature of the interest in accordance with paragraph 8.1 (but subject to paragraph 8.2)

9.1.2. withdraw from the room or chamber where the meeting considering the business is being held unless you have obtained a dispensation from your authority

9.1.3. not participate or participate further in any discussion of the matter at the meeting

9.1.4. not participate in any vote or further vote taken on the matter at the meeting

9.2. if a function of your authority may be discharged by a member acting alone and you have a disclosable pecuniary interest in any matter to be dealt with or being dealt with in the course of discharging that function you may not take any steps or any further steps in relation to the matter (except for the purpose of enabling the matter to be dealt with otherwise than by yourself) unless you have obtained a dispensation from your authority permitting you to do so

9.3. If you have a pecuniary interest other than a disclosable pecuniary interest in any business of your authority which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest and you are present at a meeting of the authority at which such business is to be considered or is being considered you must:-

9.3.1. disclose the existence and nature of the interest in accordance with paragraph 8.1 (but subject to paragraph 8.2)

9.3.2. unless you have obtained a dispensation from your authority withdraw from the room or chamber where the meeting considering the business is being held in a case where paragraph 9.4 applies immediately after making your representations or in any other case when the business is under consideration

9.4. Where you have a pecuniary interest other than a disclosable pecuniary interest in any business of your authority unless you hold a dispensation you may attend a meeting for the purpose of making representations only

▪ **Part 3**

▪ **Registration of Members Interests**

10. Disclosable Pecuniary Interests

10.1. Under the Localism Act 2011:-

10.1.1. you are required to notify your authority's monitoring officer of any disclosable pecuniary interests as referred to in paragraph 4 which you have at the time notification is given before the end of 28 days beginning with the day on which you become a member or co-opted member of the authority.

10.1.2. you are also to notify your authority's monitoring officer of any disclosable pecuniary interest as referred to in paragraph 4 which is not

entered in your authority's register of interests and is not subject of a pending notification before the end of 28 days beginning from the date of disclosure of that interest at a meeting of your authority

10.1.3. if a function of your authority may be discharged by a member acting alone and you are exercising such a function you are also required to notify your authority's monitoring officer of any disclosable pecuniary interest as referred to in paragraph 4 which is not entered in your authority's register of interests and is not subject of a pending notification before the end of 28 days beginning from the date you become aware that you have a disclosable pecuniary interest relating to the matter being to be dealt with or being dealt with in the course of discharging that function

10.2. Notifications of disclosable pecuniary interests to the monitoring officer under paragraph 10.1 shall be in writing

10.3. Notwithstanding the provisions of the Localism Act 2011:-

10.3.1. before the end of 28 days beginning from the date upon which this Code takes effect or within 28 days of your election or appointment to office (whichever is later) you must register in your authority's Register of Members' Interests maintained under s.29 Localism Act 2011 your disclosable pecuniary interests as referred to in paragraph 4

10.3.2. you must within 28 days of becoming aware of any new disclosable pecuniary interest or change to any disclosable pecuniary interest registered under paragraph 10.1 or paragraph 10.2 register details of that new disclosable pecuniary interest or change by providing written notification to your authority's monitoring officer

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11. Other Pecuniary Interests and Non-Pecuniary Interests

11.1. Before the end of 28 days beginning from the date upon which this Code takes effect or within 28 days of your election or appointment to office (whichever is later) you must register in your authority's Register of Members' Interests maintained under s.29 Localism Act 2011 your pecuniary interests of a description referred to in paragraph 5.1 and your non-pecuniary interests

of a description referred to in paragraph 6.1 by providing written notification to your authority's monitoring officer

11.2. You must within 28 days of becoming aware of any new interest registerable under paragraph 11.1 or change to any interest registered under that paragraph register details of that new interest or change by providing written notification to your authority's monitoring officer

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12. Sensitive interests

- Where you have an interest registerable under paragraphs 10.1, 10.2, 10.4 or 11.1 and the nature of the interest is such that you and your authority's monitoring officer consider that disclosure of details of the interest could lead to you or a person connected with you being subject to violence or intimidation if the interest is entered in the authority's register then copies of the register available for inspection and any published version of the register shall not include details of the interest but may state that you have an interest details of which are withheld under s.32(2) Localism Act 2011 and/or this paragraph

■ Part 4 – Conflicts of interest for members of the Executive

13 This part applies only to members of the Council's executive (cabinet)

14 For the purpose of this part a "conflict of interest" includes (but is not limited to) disclosable pecuniary interests, other pecuniary interests and non-pecuniary interests

15 Where a member of the executive is present at a meeting of the council or a committee or sub-committee of the council or at a meeting of the executive or a committee or sub-committee of the executive and the member has a disclosable pecuniary interest, another pecuniary interest or a non-pecuniary interest the provisions of paragraphs 8 and 9 of this Code shall apply

16 Where a member of the executive is present at a meeting of the executive or at a meeting of a committee or sub-committee of the executive and the member has a conflict of interests which is not a disclosable pecuniary interest, another pecuniary interest or a non-pecuniary interest the member concerned shall declare the existence and nature of that interest to the meeting at the commencement of the meeting or when the item to which the interest relates comes under consideration.

17 The Council's head of paid service or those authorised by him may grant a dispensation to a member of the executive allowing him to speak and/or vote on issues where a member has such a conflict of interests as is referred to in paragraph 16 of this Code

18 Where a member of the executive has any conflict of interest and is not a decision maker with regard to an executive function but is consulted by another member of the executive or by an officer who is to make an executive decision then the member with such a conflict of interest shall declare the existence and nature of the interest and shall not take part in the consultation unless he has a dispensation from :-

18.1 the authority under the Localism Act 2011 in the case of a conflict of interests with is either a disclosable pecuniary interest or another pecuniary interest or

18.2 The head of paid service or those authorised by him in the case of any other conflict of interest

▪ APPENDIX

▪ THE PRINCIPALS CONTAINED IN s.28 (1) LOCALISM ACT 2011

1. Selflessness

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2. Integrity

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3. Objectivity

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4. Accountability

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5. Openness

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6. Honesty

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7. Leadership

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