

Review of the Members' Code of Conduct

To: Constitution and Ethics Committee

Meeting Date: 29 September 2021

From: Monitoring Officer & Director of Law and Governance

Electoral division(s): All

Key decision: No

Outcome: Review of the Council's Members' Code of Conduct

Recommendations: The Committee is recommended to:

- a) Review the new Local Government Association Model Code of Conduct against the Council's current Members' Code of Conduct;
- b) Agree to retain the Council's current Members' Code of Conduct for the time being; and
- c) Agree to keep the Council's Members' Code of Conduct under review, pending a response from the Government to the recommendations from the Committee on Standards in Public Life

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1. Background

- 1.1 The Committee on Standards in Public Life wrote to the Prime Minister in January 2018 to inform the Government that the Committee was to undertake a review of local government standards. As part of this review, the Committee held a public stakeholder consultation and looked at the conduct and culture in local government, both at principal authority level and in town and parish councils. The consultation closed on 18th May 2018 and the Committee's report was published on 30th January 2019. Amongst the various recommendations contained within the Report, it was suggested that the Local Government Association (LGA) should create an updated model Code of Conduct produced in consultation with representative bodies of Councillors and officers of all tiers of local government.
- 1.2 On the 11th September 2019, the Board of the LGA agreed to commence reviewing the Code of Conduct, and in June 2020 they began consulting on a draft Model Member Code of Conduct. Responses to the consultations were gathered by the LGA Research and Information Team via an online questionnaire and email. Over 1600 written responses to the consultation were received. In addition, workshops of members and Monitoring Officers took place to discuss the approach and content.
- 1.3 At Cambridgeshire County Council, all political groups were offered input into the new Model Code of Conduct via the extensive consultation process. The following formal response was sent from the Constitution and Ethics Committee, following a discussion at the Committee meeting on 30th June 2020:

“Generally the Committee welcomes the revised model code, whilst noting that it is not dissimilar to the current Cambridgeshire County Council code of conduct, which actually differs considerably from the previous national model code of conduct issued after the Localism Act changes. For example CCC has additional types of interest called "non-statutory disclosable interests" in its Code and therefore believes provision for this type of interest to be necessary.

The Committee would like to make the following comments:

- The current CCC code uses the word "respect" rather than "civility" and the Committee is unclear why the word "civility" is preferred
- The Committee notes the proposal to reinsert a clause about bringing the Council into disrepute which was contained in the pre-Localism Act Code and felt this can be interpreted in many different ways -clear guidance would be necessary about application
- The Draft Model Code proposed that the minimum value of gifts or hospitality that should be registered with the monitoring officer was £25, while CCC has only recently reviewed this and agreed to raise the minimum value in the Council's Code from £25 to £100 on 23rd July 2019. This was thought to cover the type of hospitality extended to the Council Chairman when he and his wife were invited to a civic dinner at another local authority. The Committee would therefore prefer this amount to be higher than £25.

- The Committee believes that the draft Code's definition of harassment was too limited as it seems to be restricted to harassment which is based on one of the protected characteristics under the Equality Act. The Committee would prefer the Code to contain a broader definition of harassment, such as that of the Citizens Advice Bureau, which distinguishes between harassment and harassment which can also be unlawful discrimination:
<https://www.citizensadvice.org.uk/law-and-courts/discrimination/what-are-the-different-types-of-discrimination/harassment/>
- The Committee welcomes the proposal in the consultation for the Code of Conduct itself to be separated from individual pieces of guidance, in order to produce a more streamlined, simplified and unambiguous document, which was the unanimous desire of the Committee.
- The Committee would prefer the same tense to be used throughout the document as the current draft appears to vary between the first and second person singular but has no preference about which to use.
- The Committee would welcome guidance on best practice resolution processes.
- The Committee has also expressed concerns on a number of occasions in the last few years about the perceived pointlessness of a Code of Conduct which does not carry with it any effective sanctions.”

- 1.4 The final Model Code of Conduct for Councillors was approved by the LGA on 23rd December 2020, and made available to all local authorities shortly thereafter. The stated purpose of the LGA's Model Code of Conduct is to assist Councillors in modelling the behaviour expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken. The new LGA Model Code of Conduct is attached at Appendix 1 of the report.
- 1.5 Guidance to accompany the code, offering advice on how it should be interpreted, was published in July 2021, and can be found via the link in the Source Documents below. This guidance also contains links to other LGA guidance, such as guidance for Councillors on social media.
- 1.6 There is no legal requirement to adopt the new Model Code of Conduct, as under the Localism Act 2011, it is for each authority to adopt whatever code of conduct it thinks fit. The LGA expressly acknowledges that the model code is a “template”, which it will review annually.
- 1.7 The Committee now has all the information to consider the new model code alongside the Council's current Members' Code of Conduct (attached at Appendix 2 of the report) and now needs to consider the following three options:
- (i) Adopt the new code in its entirety;
 - (ii) Make amendments to the Council's existing Members' Code of Conduct, in order to improve or enhance it; or
 - (iii) Retain the Council's existing Members' Code of Conduct for the time being.

- 1.7 Any changes to the Council's current Members' Code of Conduct would need to be recommended to Full Council for approval.
- 1.8 The Committee is asked to consider the new code alongside the existing Code and form a view on whether Members prefer the content, style and format of the new Model Code of Conduct to the Council's current Members' Code of Conduct, and whether it makes it easier to understand.

2. Main Issues

How does the new model Code differ from the Council's existing Code?

2.1 The key differences are as follows:

1. The new LGA Code of Conduct has comments/guidance built into every section, as well as separate guidance on how to interpret it.
2. The new LGA Code of Conduct makes clear in the introduction that it applies to social media communications in specific circumstances, and includes a rebuttable presumption that a Member is acting in their official capacity for all public interactions, including on social media.
3. The new LGA Code of Conduct adds in "harassment" as well as bullying. This is a best practice recommendation from the Committee on Standards in Public Life, which also recommends that examples of such behaviour are given.
4. The new LGA Code of Conduct adds back in (previously contained in the pre-2012 national code of conduct) "bringing your role or local authority into disrepute". This is not included in the Council's current Members' Code of Conduct.
5. The new LGA Code of Conduct adds in a requirement to undertake Code of Conduct training, and to comply with any sanctions imposed on a Councillor following a finding that there has been a breach of the Code of Conduct.
6. The new LGA Code of Conduct sets gifts and hospitality declarations at £50 and over. The Council's current Members' Code of Conduct is set a higher level of £100.
7. The new LGA Code of Conduct has a section on "Other Registrable Interests". The Council's current Members' Code of Conduct calls these "non-statutory disclosable interests", which is very similar.
8. The standards in the new LGA Code of Conduct are set out in the first person (e.g. "I ..."), so a Member reads the Code of Conduct as a personal commitment to behave in accordance with the standards.

2.2 The Council and the Constitution and Ethics Committee have a statutory duty to promote and maintain high standards of conduct. An appropriate Members' Code of Conduct is an important part of complying with that duty.

- 2.3 As the Council's current Code of Conduct is already comprehensive, there are few essential differences between the two codes of conduct. However, where differences exist, these reflect the findings of the Committee on Standards in Public Life.
- 2.4 One of the overriding reasons for a new Model Code of Conduct was for all local authorities to adopt it, ensuring consistency across many tiers of local government, especially for those Councillors who represent at both County and Districts levels, and even Parish level, where different codes of conduct could apply. This is currently a cause of confusion for those Members, as well as the public. Whilst the LGA is promoting the new Model Code of Conduct for adoption, there is no statutory requirement to do so.
- 2.5 There has been a mixed response to the LGA Model Code of Conduct nationally, with some councils adopting it in full, others in part and others not at all. In a survey with Monitoring Officers and Deputy Monitoring Officers conducted by Lawyers in Local Government (LLG), the following findings were revealed from 82 responses:
- 20% have adopted, or intend to adopt, the Model Code of Conduct in full.
 - 20% will adopt parts of the Model Code of Conduct.
 - 55% have decided not to adopt the Model Code of Conduct, of which:
 - 25% will not be adopting the model Code of Conduct or changing their own current Code of Conduct.
 - 30% have not adopted the Model Code of Conduct in full or in part, but are looking to make some changes to their own Code of Conduct independently.
 - 5% remain undecided at this time
- 2.6 It is understood that the position across Cambridgeshire reflects the findings of the LLG survey, with each council taking a different view on the new Model Code of Conduct. Therefore, in the absence of a new nationally mandated code of conduct, it is not going to be possible to achieve one code of conduct adopted by all local authorities.
- 2.7 The Government has yet to respond to the Committee on Standards in Public Life's report, which included a recommendation for the introduction of more meaningful sanctions for more serious breaches of the Code of Conduct, which would require primary legislation. The Committee may wish to postpone making any alterations to its current Members' Code of Cond until the Government's response to this recommendation has been issued.

3. Source Documents

- 3.1 [Local Government Ethical Standards Report \(Committee on Standards in Public Life – 30th January 2019\)](#)
- 3.2 [Guidance on the LGA Model Code of Conduct](#)