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| To: | **Standards Committee** |
| Date: | **29 June 2020** |
| Report of: | **Monitoring Officer / Head of Law and Governance** |
| Title of Report: | **Local Government Association consultation on draft Code of Members’ Conduct** |

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| Summary and recommendations | |
| Purpose of report: | This report informs the Committee of the consultation by the Local Government Association on its draft Model Member Code of Conduct. |
| Key decision: | No |
| Recommendations: That the Standards Committee resolves to:  1. Note the report;  2. Approve the draft consultation response at Appendix 3; and  3. Authorise the Head of Law and Governance to submit a consultation response to the LGA on the Council’s behalf. | |
| Appendix 1 | LGA Draft Model Member Code of Conduct |
| Appendix 2 | LGA Consultation Questionnaire |
| Appendix 3 | Proposed response to LGA Consultation Questionnaire |

# Introduction and background

1. Oxford City Council adopted the Members' Code of Conduct in July 2012 and it forms part of the Constitution (Section 22). All Oxfordshire local authorities are covered by a single, jointly-agreed Code of Conduct which ensures that councillors who are members of multiple authorities within the area are covered by a single code, providing clarity and consistency. The same Members' Code of Conduct has been adopted by each of the four parish councils in Oxford (Blackbird Leys, Littlemore, Old Marston, and Risinghurst & Sandhills Parish Councils).
2. In 2018 the Committee on Standards in Public Life (“the CSPL”) undertook a review of local government ethical standards. The Committee on Standards in Public Life considered that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. A consultation period ran from 29 January to 18 May 2018 with which the Council engaged.
3. The terms of reference for the review were to:
4. examine the structures, processes and practices in local government in England for:
   * maintaining codes of conduct for local councillors
   * investigating alleged breaches fairly and with due process
   * enforcing codes and imposing sanctions for misconduct
   * declaring interests and managing conflicts of interest
   * whistleblowing
5. assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
6. make any recommendations for how they can be improved
7. note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation
8. The Committee on Standards in Public Life (“the CSPL”) published the [Local Government Ethical Standards report](https://www.gov.uk/government/publications/local-government-ethical-standards-report) (“the Report”) on 30 January 2019.
9. On 25 February 2019 the Standards Committee considered the Report.
10. The Local Government Association (“the LGA”) has now released a draft Model Member Code of Conduct and is seeking views on it.

**LGA Model Code of Conduct**

1. On 8June 2020 the LGA released a [model code of conduct for consideration](https://www.local.gov.uk/local-government-association-model-member-code-conduct) (Appendix 1) together with a consultation questionnaire (Appendix 2). The LGA has stated that “the draft Model Member Code of Conduct aims to be concise, written in plain English and be understandable to members, officers and the public. The draft Model Member Code has been designed to aid members in all tiers of local government model the behaviours and high standards that anyone would expect from a person holding public office. Equally, it articulates behaviour which falls below the standards that would be expected of council members.” The LGA states that the draft is designed to help set a framework for public and councillor interaction, emphasising the importance of civility and that councillors should be protected from bullying, intimidation and abuse.
2. The LGA has drafted a Model Member Code of Conduct incorporating the recommendations from the Committee on Standard’s in Public Life’s recommendations on Local Government Ethical Standards and the representation from its membership. Part of the CSPL’s recommendations were the introduction of sanctions for breaches of the code, alongside an appeals process. This aspect is outside the scope of the LGA consultation, as it requires legislative changes by Government, but the LGA has sought to reflect some of the possible changes *by using square brackets where legal changes would be necessary*. These have been shown within this report in bold type to assist members.
3. A model code would create consistency across England and reflect the common expectations of the public regardless of geography or tier of authority. The draft model code does not differ significantly in content from the local code already in operation in Oxfordshire, although some of the language used is different. The Oxfordshire authorities would continue to work collaboratively to consider whether to adopt the final model code from the LGA, to keep the current Members' Code of Conduct or to adopt an amended Members' Code of Conduct dependent on any statutory requirements at that time.
4. The draft Model Code is attached at Appendix 1. The Standards Committee will note that it:-
5. Applies to members when they are acting **[or claiming or giving the impression that they are acting]** in **[public or in]** their capacity as a member or representative of the Council, although members are expected to uphold high standards of conduct and show leadership at all times;
6. Applies to all forms of member communication and interaction including written, verbal, non-verbal, electronic and via social media **[where the member could be deemed to be representing the Council or if there are potential implications for the Council’s reputation]**. The Council in its representations to the CSPL argued that any code should be widened in scope with a rebuttable presumption that a councillor’s public behaviour, including on publicly accessible social media was in their official capacity. The Localism Act 2011 may need to be amended to allow for this. The Council has adopted its own Social Media Code for members. The LGA consultation specifically raises the question whether there should be a separate social media code or whether provision for guidance on the use of social media should be included in the main body of the code;
7. The Model conduct and expectations are for guidance only, whereas the specific minimum obligations that are expected set out instances where action will be taken;
8. It introduces the requirement to treat all persons with “civility” which is defined as meaning “politeness and courtesy in behaviour, speech and in the written word”;
9. Gives a definition of bullying -“Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.”
10. Gives a definition of harassment - “The Equality Act 2010 defines harassment as ‘unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual’. The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.”
11. Introduces requirements around gifts and hospitality –“Not accepting significant gifts or hospitality 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. Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt. 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 member. However, you do not need to register gifts and hospitality which are not related to your role as a member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you may wish to notify your monitoring officer of any significant gifts you are offered but refuse which you think may have been offered to influence you.” The Council already requires that Councillors declare gifts with a monetary value of £50 and over. The model code proposes a threshold of £25.
12. States that Councils must have an internal resolution procedure to address any behaviour that is in breach of the Member Code of Conduct. It says “In the case of a non-criminal breach of the Code, the following escalating approach can be undertaken. If the breach is confirmed and of a serious nature, action can be automatically escalated.
13. an informal discussion with the monitoring officer or appropriate senior officer
14. an informal opportunity to speak with the affected party/ies
15. a written apology
16. mediation
17. peer support
18. requirement to attend relevant training
19. where of a serious nature, a bar on chairing advisory or special committees for up to two months
20. where of a serious nature, a bar on attending committees for up to two months.

Where serious misconduct affects an employee, a member may be barred from contact with that individual; or if it relates to a specific responsibility of the council, barred from participating in decisions or information relating to that responsibility.”

The Council in its representations to the CSPL highlighted that the main weakness in the standards regime is the limited range of sanctions that can be applied, which are not strong enough to provide an effective deterrent. Additional sanctions which would strengthen the standards regime should include the powers to suspend members from office and to suspend members’ allowances for a period of time. Currently there are insufficient sanctions to deal with more extreme behaviours such as bullying, dishonesty or conviction other than those provided under section 34 of the Localism Act 2011. The draft Model Member Code of Conduct does not provide any strengthening of the sanctions available and a change to the legislation would be required to allow for suspension from office or suspension of allowances.

1. Introduces two tables in relation to members’ declaration of interests. It states that where a matter arises at a meeting which directly relates to an interest in Table 1 (disclosable pecuniary interests) a member must not participate in any discussion or vote on the matter and must not remain in the room unless granted a dispensation. If a matter arises at a meeting which directly relates to an interest in Table 2 (other registrable interests) a member must declare the interest and would only be able to speak on the matter if members of the public are also allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless granted a dispensation.

The Council in its representations to the CSPL stated that the compulsory provisions for registering and declaring interests are limited to disclosable pecuniary interests with no accompanying guidance. As such it is a narrow range of interests that is subject to interpretation by elected members and is unlikely to satisfy public perceptions and expectations of the kinds of interests that should be declared. The list of interests in the tables, together with the explanation and guidance on disclosable pecuniary interests in the draft model code is to be welcomed.

1. Describes the action that must be taken where:
2. a matter arises at a meeting which directly relates to a member’s financial interest or well-being (and is not a disclosable pecuniary interest) or that of a relative or close associate
3. a matter arises at a meeting which affects:
4. a member’s own financial interest or well-being;
5. a financial interest or well-being of a friend, relative, close associate; or
6. a body covered by Table 1
7. a matter arises which affects the financial interest or well-being of a member to a greater extent than it affects the financial interests of the majority of inhabitants of the ward affected by the decision and a reasonable member of the public knowing all of the facts would believe that it would affect that member’s view of the wider public interest.

**The LGA Consultation**

1. The LGA says that it is continuing to take soundings from the sector on the issue of sanctions in anticipation of a Government response to the Committee’s recommendations.

1. The consultation is expected to address key areas that the LGA would like a view on to help finalise the Code. It is aimed at councillors and officers from all tiers of local government. The consultation on the draft member code of conduct will run for 10 weeks from **Monday 8 June** until **Monday 17 August.**
2. Appendix 3 contains a proposed response to the questions raised in the LGA consultation questionnaire. The Committee is asked to consider the proposed response and to indicate whether it is in agreement or wishes to change any of the responses.
3. It is proposed that the Head of Law and Governance will submit a response on the Council’s behalf.

**Legal implications**

1. None

**Financial implications**

1. None

**Risk management**

1. None

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| **Report author** | Emma Griffiths |
| Job title | Lawyer |
| Service area or department | Law and Governance |
| Telephone | 01865 252208 |
| e-mail | [egriffiths@oxford.gov.uk](mailto:egriffiths@oxford.gov.uk) |