

Cheltenham Borough Council
Standards Committee
13 August 2020

Report of Monitoring Officer
Consultation - LGA Draft Model Code of Conduct

Report Summary This report informs the Committee on the consultation by the Local Government Association on its draft Model Member Code of Conduct

Recommendation The Committee is asked to note the report and

1. consider whether it wishes to make a response to the draft consultation
2. if so, to determine its response to be submitted to the LGA on its behalf by the Monitoring Officer

1. Background

- 1.1 Cheltenham Borough Council Code of Members' Conduct has been in effect since July 2012 and it forms part of the Constitution (Part 5A). This Code of Conduct (attached at Appendix 1) has, in accordance with the recommendation of the Standards Committee, also been adopted by the 5 Parish Councils within Cheltenham Borough.
- 1.2 In 2018 the Committee on Standards in Public Life ("the CSPL") undertook a review of local government ethical standards. The CSPL 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 Standards Committee engaged.
- 1.3 The terms of reference for the review were to:-
 - i. 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
 - ii. assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
 - iii. make any recommendations for how they can be improved
 - iv. 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

- 1.4 The CSPL published the [Local Government Standards report](#) (“the Report”) on 30 January 2019 and the Standards Committee considered the Report on the 16 September 2019.
- 1.5 As the Committee is aware, the requirement under the Localism Act 2011 is for Councils to adopt their own Code of Conduct based on the 7 principles of public life. Therefore there is no consistency of Codes either nationally or locally. The CSPL researched the local Codes of Conduct and found that there was considerable variation in terms of length, breadth, clarity and detail of Codes of Conduct. They believed that this created confusion amongst members of the public and among Councillors who represent more than one tier of local government. It was found that many Codes of Conduct failed to address important areas of behaviour such as bullying and harassment. Consequently, they recommended that a Model Code of Conduct should be available to local authorities in order to enhance the consistency and quality of local authority codes. It was recommended by the CSPL that “The Local Government Association should create an updated Model Code of Conduct, in consultation with representative bodies of Councillors and Officers of all tiers of local government”.
- 1.6 The Local Government Association (“the LGA”) has now released a draft Model Member Code of Conduct and is seeking views on it to be submitted using an on-line form by the 17 August 2020.

LGA Model Code of Conduct

- 1.7 On 8 June 2020 the LGA released a draft [Model Code of Conduct](#) for consideration (Appendix 2) together with a consultation questionnaire (Appendix 3). 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 Model Member Code is 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 behaviours 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.
- 1.8 The LGA has drafted a Model Member Code of Conduct incorporating the recommendations from the CSPL. Other recommendations from the CSPL require, as the Committee is aware, changes in legislation and therefore are outside of the scope of the LGA Model Code. Nevertheless, the LGA has sought to incorporate some of the possible changes by using square brackets where legislative changes would be necessary. These relate to the application of the Code and are highlighted in paragraph 1.10 in bold type to assist the Committee in identifying them.
- 1.9 A Model Code would create consistency across England and would reflect expectations of the public regardless of geography or tier of authority. The draft Model Code does not differ significantly in content from the Code of Conduct which is already in operation at the Council, although some of the language used is different. Once finalised, following consultation, the LGA Model Code is intended to be offered as a template to Councils to adopt in whole and / or with local amendments. The LGA intends to review the Model Code annually to ensure that it continues to be fit for purpose.
- 1.10 The Standards Committee will note that the Code is intended to apply
- I. to Members when 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;
 - II. 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 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

note: The parts shown in square brackets in bold in I and II above, would require legislation to amend the provisions of the Localism Act 2011

1.11 The specific obligations under the Model Code are expressed as individual commitments by a Councillor and are set out in the table below:-

Model Code Commitment	Commitment No.
To treat all persons with “civility” which is defined as meaning “politeness and courtesy in behaviour, speech and in the written word”;	1 & 2
<p>Not bullying or harassing any person and definitions are provided as follows:-</p> <p><i>Bullying [ACAS definition]</i></p> <p>“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”.</p> <p><i>Harassment [Equality Act 2010 definition]</i></p> <p>“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.</p>	3
Not to compromise, or attempt to compromise, the impartiality of anyone who works for, or on behalf of the Council	4
Not to disclose confidential information without consent or required by law and not to prevent anyone getting information that they are entitled to by law.	5 & 6
Not bringing role or Council into disrepute	7
Not using / attempting to use position to advantage / disadvantage of themselves or anyone else	8
Not misusing Council resources	9
Not to accept significant gifts or hospitality from persons seeking to acquire, develop or do business with the	11

<p>Council or from persons who may apply to the Council for any permission, licence or other significant advantage.</p>	
<p>Registering with the Monitoring Officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt. The draft goes on to advise that Members should exercise caution in accepting any gifts or hospitality which are (or reasonably believed to be) offered because you are a Member.</p>	<p>12</p>
<p>Registering and declaring interests. The draft Model Code references registrable interests in two tables, Table 1 being the statutory Disclosable Pecuniary Interests and Table 2 being "Other Registrable 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.</p> <p>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.</p> <p>The Model Code then goes on to provide that where</p> <ol style="list-style-type: none"> 1) 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 2) a matter arises at a meeting which affects: <ul style="list-style-type: none"> a Member's own financial interest or well-being; a financial interest or well-being of a friend, relative, close associate; a body covered by Table 2; 3) 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. <p>The Member may only speak if members of the public are allowed to speak and cannot take part in the</p>	<p>10</p>

discussion or vote and must leave the meeting unless a dispensation has been granted.	
[Note: The nature of sensitive interests does not need to be declared at a meeting.]	

1.12 The consultation draft of the Model Code provides an example and recommendations about an internal resolution procedure for the determination of complaints. The draft confirms the requirements of the Localism Act to have mechanisms in place to deal with allegations that Members have breached the Code of Conduct. It goes on to say 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.

- 1) an informal discussion with the monitoring officer or appropriate senior officer
- 2) an informal opportunity to speak with the affected party/ies
- 3) a written apology
- 4) mediation
- 5) peer support
- 6) requirement to attend relevant training
- 7) where of a serious nature, a bar on chairing advisory or special committees for up to two months
- 8) 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.”

2.0 **CHELTHENHAM BOROUGH COUNCIL CODE OF MEMBERS’ CONDUCT**

- 2.1 As referred to above, the draft Model Code, albeit worded slightly differently, is not dissimilar in its requirements to that already in place at the Council.
- 2.2 The Cheltenham Borough Council Code of Members’ Conduct, contains provisions equivalent to items 3 (but no reference to harassment) 4, 5, 6, 8, 9 and 10 of the LGA Model Code.
- 2.3 The Council’s Code does not refer to civility (LGA Model Code items 1 & 2) but requires Members to treat others with respect and the Council’s Code requires Members to promote and support high standards of conduct when serving in their public post by leadership and example rather than as the LGA Model Code item 7 requires Members not to bring their role or Council into disrepute.
- 2.4 The Council’s Code requires Members to register with the Monitoring Officer the name of any person, organisation or other body from whom the Member has received, by virtue of their office, gifts or hospitality worth £50 or more. However, the specific requirements about the treatment of gifts and hospitality (LGA items 11 & 12) are not contained in the Council’s Code of Conduct but in a separate Protocol that is complementary to the Code. The Protocol provides a general consent regime within which low level gifts and hospitality may be accepted by Members without

specific consent. It further provides that the consent of the Monitoring Officer is required for gifts / hospitality outside of that general consent regime and that gifts / hospitality received of a greater value than £25 be declared and registered. The Protocol imposes a greater obligation in the value of gifts that need to be registered (£25 rather than £50) than the Code of Conduct and the Committee may wish to consider, in a review of the Protocol in due course, whether it wishes to maintain this value.

- 2.5 Finally, the interests which are recommended to be declared within Tables 1 & 2 of the Model Code are almost identical to those contained in the Council's Code of Conduct, as are the requirements for declaration and restriction on participation
- 2.6 It is reassuring to know that the Code which has already been adopted by the Council is so similar to the proposed Model Code.
- 2.7 The Council has made arrangements, in accordance with the provisions of the Localism Act 2011, for the determination of complaints that any Councillor has failed to comply with the Council's Code of Members' Conduct. All complaints must be made to the Monitoring Officer to whom the Council has delegated authority to consider and determine complaints and to seek to resolve complaints including, where necessary, arranging for an allegation to be investigated. The Monitoring Officer must, when assessing and determining complaints, consult with the two Independent Persons (who are neither Councillors nor Officers of the Council) appointed by the Council under the Localism Act 2011. The Council also provided the option for the Monitoring Officer to refer the matter to the Standards Committee where more appropriate to do so. The Council's arrangements were designed to give flexibility and enable the informal resolution of complaints by the Monitoring Officer and lend themselves to the escalating approach recommended in the LGA Model Code consultation draft.

3.0 THE LGA CONSULTATION

- 3.1 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 CSPL recommendations.
- 3.2 The current consultation is expected to address key areas upon which the LGA is seeking views 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 runs until Monday 17 August.
- 3.3 Appendix 4 contains some suggested comments / replies on the questions raised in the LGA consultation questionnaire, to assist the Committee when considering its response.

4.0 CONCLUSIONS AND RECOMMENDATIONS

- 4.1 The Committee is asked to consider this report and the suggested comments at Appendix 4 in order to determine its response to the consultation which it is proposed will be submitted on line by the Monitoring Officer by the 17 August 2020.

Report author	Contact officer: sara.freckleton@teWKesbury.gov.uk 01684 272011
Appendices	Appendix 1 - Cheltenham Borough Council Code of Members Appendix 2 – LGA Draft Model Code of Conduct Appendix 3 – Consultation Questionnaire Appendix 4 – Suggested response to Consultation Questionnaire
Background information	Localism Act 2011