

## Standards Committee

Thursday, 13th August, 2020  
6.00 - 7.45 pm

Attendees	
<b>Borough Councillors:</b>	Louis Savage, Max Wilkinson, Martin Horwood, Jo Stafford, Klara Sudbury and John Payne
<b>Independent Members:</b>	
<b>Also in attendance:</b>	Sara Freckleton (Monitoring Officer), Harry Mayo

### Minutes

**1. APOLOGIES**

Apologies were received from Councillor Hobley and the two Independent Members (Martin Jauch and Duncan Chittenden).

**2. DECLARATIONS OF INTEREST**

There were none.

**3. MINUTES OF THE LAST MEETING**

One Member clarified comments that he had made on page 5, noting that he had said that it was a shame for a discussion of such an important topic to be overshadowed by controversy. He suggested that the line that the incident had 'instead highlighted an issue of racism within the council' be amended to 'instead turned the spotlight on the council'. The Monitoring Officer agreed that this amendment was appropriate.

The minutes of the meeting held on 3<sup>rd</sup> July 2020 were approved and signed as a correct record. One Member abstained as they were not present for the previous meeting. The minutes were carried with one abstention.

**4. CONSULTATION-LGA DRAFT MODEL CODE OF CONDUCT**

The Monitoring Officer (MO) introduced the code of conduct, explaining that the model code outlined in the report had arisen from the recommendations of the Committee on Standards in Public Life. This followed their 2018 review of ethical standards in local government, the report for which was published in January 2019. One of the many recommendations was that the Local Government Association (LGA) should be asked to provide a model code with a view to providing clarity and consistency for both local councillors and the public. This arose from their finding that codes of conduct in place at all tiers of local government were not consistent and some failed to address important areas of behaviour such as bullying and harassment. She added that the draft

model code had been released for consultation purposes and responses to an online questionnaire were requested by the 17<sup>th</sup> August 2020.

She reassured Members that there was not a huge difference between the recommended provisions and those that were already in place within the Cheltenham Borough Council Code of Members' Conduct. In some cases, the wording was slightly different, but most of the provisions of the LGA's model code were already in place. She sought to focus on the differences.

She added that the current legal position was that the Code of Conduct only applied to a Member when acting in their official capacity as a Member of the Council. One of the recommendations of the Committee on Standards in Public Life was that this should be extended to include where Members are claiming that they are acting or giving the impression that they were acting in public in their capacity as a Member or representative of the Council. The model continued to say that Members were expected to uphold high standards of conduct and show leadership at all times, and clarified that the code applied to all forms of Member communication and interaction including via social media. She stressed that while this was already the case with the current code, the LGA advised making it a specific provision for the avoidance of any doubt.

The Monitoring Officer continued by explaining the format of the model code. Minimum requirements were set out, expressed as commitments, in bold type, while guidance was interspersed amongst the requirements as well as in appendices to the code.

She outlined the key differences between the model code and the council's current code of conduct, as well as areas she felt were in need of clarification. The first requirement asked Members to treat each other, the public, volunteers, employees of the Council and of partner organisations with 'civility' – defined in the guidance as 'politeness and courtesy'. This differed from the current requirement to treat others with 'respect'. She suggested that the requirement be amended to refer to both civility and respect, since the former did not necessarily include the latter. The next requirement was that Members must not bully or harass any person, with definitions given. The Council's current code already referenced bullying, but did not include harassment or any definitions.

She clarified that only two elements of the model requirements were not in the current code at all, one of which was the requirement not to bring the Council into disrepute. The current code put it a different way, requiring Members to promote and support high standards of conduct when serving in their public post by leadership and example. The other missing provision related to the acceptance of gifts and hospitality, which were covered in a separate Gifts and Hospitality Protocol along the same lines, including the LGA's recommended financial threshold of £25. She noted that the reference to 'significant' gifts at clause 11 of the model code needed an exact monetary threshold, since the word was open to interpretation. The Council's current protocol for gifts and

hospitality required them to be registered as part of the Members' Register of Interests, with a threshold of £50 rather than the recommended £25.

Finally, she added that the guidance within the model code also referred to the internal resolution procedure that needed to be in place to deal with alleged breaches of the Code of Conduct. In the current process, responsibility to consider and determine complaints was delegated to the Monitoring Officer in consultation with the two Independent Persons, with the option to refer for investigation or determination to the Standards Committee if required. She concluded that it was reassuring that the draft model code was so similar to the code of conduct already in place at the Council, and clarified that many of the questions asked in the model code survey had not been answered because there was no need to.

The Chair suggested that Members ought to go through the survey questions one by one, focusing on the areas where the model code differed from the current one.

**1. To what extent do you support the proposal that councillors demonstrate the behaviours set out in the Code when they are publicly acting as, identifying as, and/or giving the impression that they are acting as a councillor, including when representing their council on official business and when using social media?**

One Member noted the importance of social media as a key vehicle for interacting with the public. She noted that Members used social media for various different reasons, not just because they were councillors, and asked where the line would be drawn if someone were to complain about their conduct online. The Monitoring Officer responded that any complaints would follow the same procedure as currently – if the code of conduct was breached by a Member in their capacity as a councillor, it would come through the normal system regardless of whether it happened on social media or in a physical meeting. She stressed that the scope of the code of conduct and its related sanctions had not increased, just that the LGA sought to aid clarity by adding a specific reference to social media. Any broadening of the scope of sanctions would be a matter for the law.

Another Member echoed the concern that it could be difficult to tell whether someone was acting in their capacity as a Member or not. The MO emphasised that the LGA recommendation was for the code to apply whenever it appeared to a Member of the public as though they were acting as a councillor. If this could not reasonably be said to be the case, the code of conduct would not apply. It should be assumed, however, that if the discussion at hand related to council business, then the Member would be perceived to be speaking in their capacity as such. The Member reiterated his concern that a strict code of conduct might prevent Members from saying things critical of the council, even if those things were correct. The MO responded that individuals still had their freedom to express themselves, and stressed that if somebody were to

complain about them, they would have to cite a particular clause of the code of conduct that had been contravened.

One Member noted that it was practically impossible to ensure that they were not being perceived as acting in their capacity as a councillor. He suggested that the recommended response of 'to a great extent' was inappropriate given the practical problems therein, and that the code needed to define more clearly what kind of conduct was being held subject to closer judgement.

The Monitoring Officer reassured Members that there had been very few code of conduct breaches at the Council, and that they were almost always capable of informal resolution. One Member asked what safeguards would exist within the code of conduct, stressing that the Council needed diversity of opinion as well as diversity of membership, and that ultimate power of accountability needed to lie with residents rather than with a strict code of conduct.

One Member asked whether the Independent Members had been consulted about this point, and whether there was any scope for members of the public to input into the response. The MO clarified that both Independent Members had received the meeting papers and had not contacted her about any issues. Members of the public were at liberty to respond directly to the consultation if they wished.

The Monitoring Officer suggested that due to the present lack of clarity on the nature of further constraints, the answer could be changed to 'prefer not to say'. Members agreed with this.

## **2. Is it sufficiently clear which parts of the Model Code are legal requirements, which are obligations, and which are guidance?**

The MO suggested that the nature of the discussion between Members showed that it was not sufficiently clear. Members agreed that the MO should be responsible for drafting a response drawing attention to the lack of clarity, and asking for clearer direction.

## **3. Do you prefer the use of the personal tense, as used in the Code, or would you prefer the passive tense?**

The MO recommended using the personal tense, in line with Nolan principles. One Member agreed that the code should use the personal tense, as it came down to how individual councillors react. Members agreed with this.

## **4. To what extent do you support the 12 specific obligations?**

Members agreed with the suggested response of 'to a great extent' to all obligations but made a number of observations..

One Member suggested that he was uncomfortable about obligation 4 as it seemed restrictive. Individuals within the Council might sometimes act in a way

that, although not malicious, did not really see the whole picture, and Members should not be barred from scrutinising this. The Chair suggested that the wording could be clarified. The MO responded that the wording was the same as in the existing code, and made clear that Members were allowed to give advice and direction, just not to use their position to impose their will or inappropriately influence results.

Regarding obligation 5, one Member emphasised that when something in the public interest was leaked, Members should not be prevented from discussing it, citing the example of parliamentary privilege within the House of Commons. The MO clarified that this was also in the current code, and did not apply with regard to something that somebody else had disclosed. In this case, the obligation would not be on the Member, as it was not disclosed to them in confidence. In particular, it referred to pink papers and other things that were directly disclosed to the Member themselves in confidence.

The Member asked whether emails on a mass distribution list (e.g. from local groups to every member) would be confidential, since they were going to a large number of people. The MO responded that the clause referred to cases when the Member might reasonably believe it was confidential. If documents were sent both to councillors and members of the public, it could be reasonably assumed that they were not. The Member suggested that the clause's reference to things 'of a confidential nature' was ambiguous, and could refer to something that was originally confidential but was leaked by someone else. The MO agreed with this point, and suggested that it be refined at a later date. The public interest exemption was important, and needed to be taken into account.

On obligation 7, one Member suggested that 'bringing the council into disrepute' was a subjective judgement call and asked whether certain political opinions would be seen as doing so. He suggested a caveat about a commitment to free speech. The Chair proposed that the free speech issue could be resolved by a general caveat rather than returning to it each time.

The Monitoring Officer noted that obligation 11 would be a new addition to the formal code of conduct, although gifts and hospitality were already dealt with in a separate protocol. She reminded Members of the need to clarify the word 'significant' and set a proper threshold to avoid ambiguity.

Members agreed that the protocol needed refining, particularly with regard to cumulative gifts, which could add up to a lot without their individual values exceeding the threshold. The MO agreed that this was not covered within the current protocol, and should be looked at closely when reviewing the document.. The MO agreed that some refinement was necessary, but warned against adding too many caveats and clarifications – conciseness was important.

One Member stressed that the public perception of the Council was essential. The implication that someone's influence could be bought had to be avoided at

all costs. However, he advised taking a nuanced approach – it would not be wise to have a lengthy investigation, giving the impression that the council was corrupt, just because a Member did not realise how much a small gift was worth. One Member questioned the likelihood of receiving a gift worth over £25 without realising it. Another Member agreed that it was easy to query the value of a gift, and suggested that the lower limit made them more attentive.

The MO clarified that the Member's statutory interest declaration, required the disclosure of who had paid their election expenses. One Member explained that as an MP, any gift solicited had to go on their Register of Interests, but this was less clear for councillors. Members agreed that gifts made to council candidates should be properly declared in full, and that they were dissatisfied by this grey area. The MO agreed to seek further clarification on this point..

**5. If you would like to propose additional or alternative obligations, or would like to provide more comment on a specific obligation, please do so here:**

The MO suggested that obligation 1 be reworded to read 'Treating other Councillors and the public with civility and respect', and obligation 2 to read 'Treating Council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respect'. Members agreed to both of these.

**6. Would you prefer to see the obligations as a long list followed by the guidance, or as it is set out in the current draft, with the guidance after each obligation?**

The MO suggested that it was unhelpful to put guidance about complaints procedure within the code, and advised keeping it separate instead. Members agreed with this.

**7. To what extent do you think the concept of 'acting with civility' is sufficiently clear?**

The Chair reminded Members that it was previously agreed to broaden this to 'civility and respect' as recommended.

**8. To what extent do you think the concept of 'bringing the council into disrepute' is sufficiently clear?**

The recommended suggestion was that this was moderately clear which was agreed. One Member stressed the importance of clarifying freedom of political speech. Members agreed with this.

**9. To what extent do you support the definition of bullying and harassment used in the code in a local government context?**

The recommended suggestion was to a great extent, which was agreed. One Member emphasised that a wider definition of bullying needed to include the coercive behaviour that existed in politics, and to acknowledge the hurt felt by individuals and communities who were ignored. The MO clarified that the current code forbade bullying but did not define it. The LGA recommendation, as explained later on, was to accept the Advisory, Conciliation and Arbitration Service (ACAS) definition of bullying, which included those things.

**10. Is there sufficient reference to the use of social media?**

Members agreed with the suggested response.

**10a. Should social media be covered in a separate code or integrated into the overall code of conduct?**

Members agreed that it should be integrated into the overall code of conduct.

**10b. If you would like to make any comments or suggestions in relation to how the use of social media is covered in the code please do so here**

Members agreed that the response should reflect the concerns of the Committee that the code requirements should not have the unintended consequences of constraining their use of social media in a personal capacity.

**11. To what extent do you support the code going beyond the current requirement to declare interests of the councillor and their partner?**

Members agreed the recommendation in line with the Council's current code.

**12. Should the requirement to declare interests be in the main body of the code or in the appendix where the draft model code currently references it?**

Members agreed that it should be in the main body.

**13. To what extent do you support the inclusion of these additional categories for registrations?**

Members agreed the recommended response and discussed the following additional categories of registrations:

- 'any organisation, association, society or party of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council'
- 'any organisation, association, society or party that exercises functions of a public nature of which you are a member or in a position of general control or management'

- ‘any organisation, association, society or party directed to charitable purposes’
- ‘any organisation, association, society or party of whose principal purposes includes the influence of public opinion’

One Member warned that some councillors would have accumulated all sorts of memberships over the years, and noted that some categories were ambiguous, such as ‘functions of a public nature’, while ‘the influence of public opinion’ could include anything. One Member stressed that it was key to distinguish between being an ordinary rank-and-file member of a group, and being active or in a key position. He suggested that paying an annual subscription had no effect on his actions. The MO agreed that the categories were widely drawn, but advised that narrowing the definitions often made things more complicated. It was agreed that reference should be made to this at the appropriate point within the consultation response.

**13a. If you would like to propose additional or alternative categories for registration, please provide them here**

Members agreed with the suggested response.

**14. To what extent do you support the proposed requirement that councillors do not accept significant gifts as set out in Obligation 11?**

Members agreed with the suggested response, having already noted the problematic ambiguity of the word ‘significant’.

**15. The draft code proposes £25 as the threshold for registering gifts and hospitality. Is this an appropriate threshold?**

Having already discussed this in detail, Members agreed with the suggested response.

**16. The LGA will be producing accompanying guidance to the code. Which of the following types of guidance would you find most useful? Please rank 1-5, with 1 being the most useful.**

Members agreed with the suggested response, that all types of guidance would be useful.

**17. If you would like to make any further comments about the code please do so here:**

The Committee was content for the Monitoring Officer to use this response to capture any of the views and concerns expressed by the Committee that had not been covered elsewhere in the responses.

Accordingly it was

**RESOLVED**



**That authority be delegated to the Monitoring Officer to reflect the Committee's views in responding to the LGA consultation on the Draft Model Code of Conduct**

**5. ANY OTHER BUSINESS**

The Chair reported that, as resolved in the last Standards Committee meeting, he had drafted a letter to the Secretary of State for Housing, Communities and Local Government and intended to send it as soon as possible. The letter concerned his department's overdue review into codes of conduct, and reiterated the points made in the last meeting about the lack of 'bite' in possible sanctions.

He thanked Members for their thorough attention to detail, and ended the meeting.

**6. DATE OF NEXT MEETING**

The next meeting was scheduled for 28<sup>th</sup> October 2020.

Max Wilkinson  
**Chairman**

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