

REPORT TO:	ETHICS COMMITTEE
AGENDA ITEM NO:	11 FEBRUARY 2021
SUBJECT:	REPORT OF NEW MODEL MEMBERS' CODE OF CONDUCT BY THE LOCAL GOVERNMENT ASSOCIATION
LEAD OFFICER:	JACQUELINE HARRIS-BAKER EXECUTIVE DIRECTOR OF RESOURCES AND MONITORING OFFICER
CABINET MEMBER:	COUNCILLOR CALLTON YOUNG CABINET MEMBER FOR RESOURCES AND FINANCIAL GOVERNANCE
WARDS:	ALL
<p>CORPORATE PRIORITIES 2021-2024/POLICY CONTEXT.</p> <p>The proposal will ensure good governance within the Council and by councillors. Good governance underpins the Council's new Core Priorities and Ways of Working:</p> <ul style="list-style-type: none"> • we will live within our means, balance the books and provide value for money for our residents; • we will focus on tackling ingrained inequality and poverty in the borough; • we will focus on providing the best quality core service we can afford. First and foremost, providing social care services that keep our most vulnerable residents safe and healthy. And to keep our streets clean and safe; and • to ensure we get full benefit from every pound we spend, other services in these areas will only be provided where they can be shown to have a direct benefit in keeping people safe and reducing demand. 	
<p>FINANCIAL IMPACT</p> <p>Implementation of the recommendations contained in this report shall be contained within existing budgets.</p>	
<p>FORWARD PLAN KEY DECISION REFERENCE NO.: N/A</p>	
<p>1. RECOMMENDATIONS</p> <p>The Ethics Committee is asked to:</p> <p>1.1 Note the contents of the new Local Government Association model Code of Conduct for Members in Appendix A and the detail of this report; and</p> <p>1.2 Request officers to conduct a gap-analysis between the new LGA model Code of Conduct and the current adopted Code of Conduct for Members within the Constitution and report back to the Committee for further consideration.</p>	

2. EXECUTIVE SUMMARY

- 2.1 The Council has determined that the Ethics Committee shall be responsible for receiving and considering reports on matters of probity and ethics and to consider matters relating to the Code of Conduct.
- 2.2 The Committee on Standards in Public Life (“the CSPL”) was established in 1994 by the then Prime Minister, and is responsible for promoting the Seven Principles of Public Life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership – commonly known as the Nolan Principles which also form a part of the current Council’s Code of Conduct for Members.
- 2.3 This report follows the review conducted by the CSPL into the current state of ethical standards in Local Government on 30 January 2019 and in particular the CSPL recommendation 1:

“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”.

- 2.4 In response to CSPL recommendation 1 and, whilst the Government continues to consider the recommendations made by the CSPL in their report, a new voluntary model Members’ Code of Conduct has now been issued by the Local Government Association and is attached at Appendix A for the Committee’s consideration.

3. DETAIL

BACKGROUND

The CSPL review

- 3.1 Members will recall the CSPL review which was launched in 2018 into the current state of ethical standards in local government. The review was considered at the Committee’s meeting on 28 February 2018 (Minute 6/18) and a response was submitted detailing the Council’s experience of standards matters and highlighting areas of the current ethics arrangements in place under the Localism Act 2011 which the Ethics Committee (including its Independent Members) considered were operating well and areas where this was not the case.

On 30 January 2019 the outcome of the review was concluded and the CSPL report issued which was considered by the Committee at its meeting on 7 March 2019 (Minute 9/19). A full copy of the final report can be viewed here:

<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

- 3.2 The CSPL report observed in relation to Member conduct that high standards of conduct in local government are needed to protect the integrity of decision-making, maintain public confidence, and safeguard local democracy. The report dealt with a number of specific areas summarised below.
- 3.3 Code of Conduct. The CSPL found in relation to codes of conduct that there was considerable variation in the length, quality and clarity of codes of conduct and

considered that this created confusion among members of the public, and among councillors who represent more than one tier of local government. The CSPL considered that many codes of conduct failed to address adequately important areas of behaviour such as social media use and bullying and harassment. The CSPL therefore recommended that an updated model code of conduct should be made available to local authorities in order to enhance the consistency and quality of local authority codes.

- 3.4 The CSPL considered, however, that there were benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. There was also a specific recommendation that the scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor's public behaviour, including comments made on publicly accessible social media, is in their official capacity.
- 3.5 Declaring and managing interests. The CSPL also found that the current arrangements for declaring and managing interests was unclear, too narrow and did not meet the expectations of councillors or the public. The CSPL recommended that the current requirements for registering interests should be updated to include categories of non-pecuniary interests. They also recommended that the current rules on declaring and managing interests should be repealed and replaced with an objective test, in line with the devolved standards bodies in Scotland, Wales and Northern Ireland.
- 3.6 Sanctions. There was consensus that the current sanctions available to local authorities in relation to breaches of the code of conduct were insufficient. Party discipline, whilst it has an important role to play in maintaining high standards, was considered to lack the necessary independence and transparency to play the central role in a standards' system. The CSPL found that the current lack of robust sanctions damaged public confidence in the standards' system and left local authorities with no means of enforcing lower level sanctions, nor of addressing serious or repeated misconduct.
- 3.7 The CSPL therefore recommended to government that local authorities should be given the power to suspend councillors without allowances for up to six months. Also councillors, who are suspended should be given the right to appeal to the Local Government Ombudsman, who should be given the power to investigate allegations of code breaches on appeal. The decision of the Ombudsman should be binding.
- 3.8 Finally, the CSPL considered that the current criminal offences relating to Disclosable Pecuniary Interests were disproportionate in principle and ineffective in practice, and should be abolished.
- 3.9 As a result the Committee will recall the report contained 26 recommendations addressed to the government and other public bodies (see pages 14-17 of the report). However, many of these recommendations require changes to primary legislation, including the introduction of the right to suspend a member for up to 6 months, all of which would be subject to Parliamentary timetabling; but also to secondary legislation and the Local Government Transparency Code. The government continues to consider its response to those recommendations made by the CSPL.

3.10 The report also contained 15 best practice recommendations highlighted by the CSPL to improve ethical standards in local government (see pages 18-20 of the report) which were considered by the Committee on 16 May 2019 (minute 36/19) alongside a gap-analysis conducted by officers against the Council's current Code of Conduct for Members and ethical arrangements. Following consideration by the Committee the following changes were recommended by the Committee and ultimately agreed by full Council:

- The Protocol on Staff-Member relations Part 5B of the Constitution be updated to include a definition of bullying and harassment (best practice recommendation 1)
- Members be encouraged to declare non pecuniary interests on their Register (best practice recommendation 5)
- To consider the term for Independent Members at a future Committee (best practice recommendation 8)

It was noted that as the Council was already in compliance with best practice recommendations 2 – 4, 6, 7, 9-13 and 15 the Committee considered no further change was required.

With regard to best practice recommendation 14 this referenced the Annual Governance Statement (AGS) and the Committee noted that this was a matter which was considered by the General Purposes and Audit Committee (GPAC) as part of the AGS approval process. (For information Members are advised that the AGS for 18/19 was agreed by the GPAC on 23 July 2019 (minute 28/19) and the AGS for 19/20 was agreed by GPAC on 7 October 2020 (minute 32/20)). In the circumstances, the Executive Director of Resources agreed to raise this recommendation direct with the Head of Audit. The matter was raised with both the Head of Audit and also the Head of Finance Insurance and Risk. By way of clarification the Committee should note that responsibility for the AGS is in fact a matter for the Head of Finance Insurance and Risk and not the Head of Audit as originally indicated. Going forward it is proposed that the AGS 20/21 will include a section to record the ongoing work in relation to the PWV companies' review being undertaken and the progress of these recommendations will be tracked through the Croydon Improvement Plan and reported to GPAC in the Autumn.

3.11 The CSPL has reviewed progress of councils in complying with the 15 best practice recommendations and on 8 January 2021 published the outcome of their progress report.

<https://cspl.blog.gov.uk/2021/01/08/local-government-ethical-standards-follow-up-to-best-practice-recommendations/>

According to the CSPL responses received have been positive with most local authorities confirming that they have already implemented or are taking steps to implement their best practice recommendations. Of the 213 local authorities who had responded by 17 December 2020:

- 75.6 % said they have prohibitions on bullying and harassment in their code of conduct, or were putting them into place. (Other councils they heard from were waiting for finalisation of the LGA model code of conduct to review how best to include prohibitions on bullying and harassment.)
- 51.2 % said they have provisions in their code of conduct requiring councillors to comply with formal standards investigation. (Most of the other councils they heard from said that they were waiting to see what the LGA model code of conduct looked like before they adapted their own codes of conduct to incorporate our best practice.)

- 98.6 % said their code is readily accessible or were making changes to make the code accessible - published and available on council premises.
- 86.4 % said they update their gifts and hospitality register regularly and have made it readily accessible to the public.
- 98.6 % said they consulted an Independent Person as to whether to undertake a formal investigation on an allegation.
- 98.6 % said they had clear guidance on their websites informing members of the public how to make a complaint under the code of conduct.
- 93.9 % said that their senior offices had arrangements for meeting with political group leaders/whips to discuss standards issues

3.12 The Council's response sent by the Chief Executive to the Chair of the CSPL confirmed the actions set out in paragraph 3.10 above which had already been taken to comply. Separately the Council's response also advised that *'since the Ethics Committee undertook this review back in 2019 concerns have been raised regarding the Council's financial governance arrangements and, in particular, the management of the Council's company interests resulting in the service of a report in the public interest by the Council's auditors. The Council has already taken a number of steps to improve governance arrangements including the agreement of an action plan which includes a strategic review of the Council's company structures. Nevertheless, it is also now proposing to revisit your best practice recommendation 14 and in particular the reporting of the Annual Governance Statement and our companies' governance arrangements to ensure they fully meet the new standards and comply with the Nolan principle of openness.'*

THE NEW TEMPLATE CODE OF CONDUCT

3.13 One of the specific outcomes of the CSPL report into local government ethical standards is a recommendation that an updated model Code of Conduct for Members be created to provide consistency across England and to reflect the common expectations of the public regardless of geography or tier.

Recommendation 1 provided:

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".

3.14 The LGA launched a 10 week consultation and on line questionnaire with representative bodies of councillors and officers of all tiers of local government which ran from 8 June until 17 August 2020 to undertake this work. Workshops of members and Monitoring Officers took place to discuss the approach and content of a revised Code. In addition 4 webinars were conducted with over 1000 participants with lots of comments questions and feedback provided during the webinar sessions. In excess of 1600 written responses to the consultation were received.

3.15 At a high level the consultation responses found:

- Overwhelming support for the Code. But a number of issues raised.
- First person or third person
- Respect or Civility?

- More on social media including confidentiality.
- Declaration of gifts £25 to low £50 too high?
- Need for accompanying guidance with examples
- Equality Act- obligation to comply
- Obligation to co-operate with investigation
- Compulsory training for members
- Sanctions

A summary of the consultation responses is also published on the LGA website see attached link <https://www.local.gov.uk/lga-model-member-code-conduct-consultation-response-analysis-november-2020>

- 3.16 A stakeholder roundtable to discuss the response and next steps took place on 30 September 2020. The revised draft Code was then considered at an LGA Councillors forum on 22 October 2020. The LGA then reviewed the draft in the light of those discussions and a final Code was then prepared and submitted to the LGA Board on 3 December 2020. The approved Code has now been published on the LGA website <https://www.local.gov.uk/local-government-association-model-councillor-code-conduct-2020-0>

and is attached at Appendix A. The LGA are currently preparing guidance to support the Code. If the Government chooses to implement any of the recommendations which require a change in the law this will also require a change to this Code. The LGA have undertaken to review the Code on an annual basis.

A link to the Members' current Code of Conduct set out in Part 5I of the Constitution is also attached to assist the Committee. <https://www.croydon.gov.uk/sites/default/files/articles/downloads/Part%205I%20-%20Members%20Code%20of%20Conduct.pdf>

NEXT STEPS

- 3.17 The Council should now review its Code of Conduct for Members, using the final LGA national model as a starting point. It is a template for councils to adopt in whole and/or with local amendments. According to the LGA the new model Code of Conduct is aimed to be concise, written in plain English and be understandable to members, officers and the public. It has been designed to help set a framework for public and councillor interaction, protect the democratic role of councillors, encourage good conduct and safeguard the public's trust in local government. The fundamental aim of the Code being to create and maintain public confidence in the role of both councillor and local government.
- 3.18 Separately the Croydon Renewal Plan (incorporating the financial recovery plan, the submission to the MHCLG for the capitalisation direction and also the Improvement Plan) contains a number of strands of work including those designed to improve governance and leadership practice at the Council. In particular the Croydon Renewal Improvement Plan provides that a:

'review of the member and officer code of conduct to fully embed the Nolan Principles in all work' be undertaken.

The Committee's work will therefore inform and support this action under the Renewal Plan also.

4. CONSULTATION

There has been extensive consultation leading up to the release of the new model Code of Conduct by the LGA as detailed above.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

- 5.1 Implementation of the recommendations contained in this report shall be contained within existing budgets.

Approved by: Lisa Taylor, Director of Finance Investment and Risk

6. LEGAL CONSIDERATIONS

- 6.1 The Head of Litigation and Corporate Law comments on behalf of the interim Director of Law and Governance that the Localism Act ('the LA') 2011 section 27 places a duty on the Council to ensure that its members and co-opted members maintain high standards of conduct and requires councils to adopt a code of conduct for their members.
- 6.2 The LA section 28 requires the Council to adopt a code whose contents must be consistent with the seven 'Nolan' principles of standards in public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership), and must set out the rules that the authority wants to put in place with regard to requiring members to register and disclose pecuniary and non-pecuniary interests. It requires the Council to put in place Arrangements under which it can investigate an allegation of a breach of a code made in writing and, if it is considered that an investigation is warranted, requires the Council to appoint at least one Independent Person whose views must be sought after it has made an investigation and before it takes a decision.
- 6.3 The LA section 29 requires monitoring officers to establish and maintain a register of members' and co-opted members' interests, to make the register available for inspection and to publish it on the council's website.
- 6.4 Under the LA section 30 members are required to notify the Monitoring Officer of any Disclosable Pecuniary Interests of them or a spouse or civil partner they live with, within 28 days of taking up office. In turn the Monitoring Officer is required to enter any notified Disclosable Pecuniary Interest in the Council's register, as well as any other interest notified to them, whether or not it is pecuniary. 'Disclosable Pecuniary Interests' are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012
<https://www.legislation.gov.uk/uksi/2012/1464/made>
- 6.5 There is no obligation by the Council to adopt a particular model of the Code of Conduct. The statutory duty is to adopt a code of conduct which complies with the statutory requirements referred to in paragraph 5.2

Approved by: Sandra Herbert Head of Litigation and Corporate Law on behalf of the Interim Director of Law and Governance.

7. HUMAN RESOURCES IMPLICATIONS.

- 7.1 There are no HR implications arising from this report. If any should arise these will be managed under the Council's policies and procedures.

Approved by: Jennifer Sankar, Head of HR Place, for and on behalf of Sue Moorman, the Director of Human Resources, January 2021

8. EQUALITIES IMPACT

- 8.1 The Equality Act 2011(section 149) places a public sector equality duty (section 146) on the Council. The duty requires the Council to have due regard to *the need to advance equality of opportunity* between persons who share a relevant protected characteristic and persons who do not share it.
- 8.2 Having "due regard" to the need to advance equality of opportunity involves having due regard, in particular, to the need to *encourage persons* who share a relevant protected characteristic *to participate in public life* or in any other activity in which participation by such persons is disproportionately low.
- 8.3 The draft model LGA Code contains a specific obligation to promote equalities and not to discriminate unlawfully against any person (paragraph 2.3.1) with reference to the Equalities Act.

Approved by: Yvonne Okiyo Equalities Manager on behalf of the Director of Policy and Partnership.

9. ENVIRONMENTAL IMPACT

There are not considered to be any environmental impacts of the proposal.

10. CRIME AND DISORDER REDUCTION IMPACT

The proposal supports the requirement to maintain good governance within the Council.

11 DATA PROTECTION IMPLICATIONS.

There are no data protection implications arising from the proposal.

CONTACT OFFICERS:

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Executive Director of Resources and Monitoring Officer (ext. 62328)

APPENDICES TO THIS REPORT

Appendix A - new template LGA Model Code of Conduct for Members

BACKGROUND DOCUMENTS:

None