

TITLE	Member Code of Conduct
FOR CONSIDERATION BY	Standards Committee on 8 March 2021
WARD	(All Wards);
LEAD OFFICER	Monitoring Officer - Andrew Moulton

OUTCOME / BENEFITS TO THE COMMUNITY

The Council is bound to maintain a Councillor Code of Conduct and to publish arrangements to advise residents how complaints can be made under the Code.

RECOMMENDATION

Standards Committee is asked:-

1. That the Model Code, with agreed amendments, be recommended to Council for adoption.
2. That a date be set for the next review of the Code of Conduct.
3. That a training programme for the new adopted Code be developed and presented by the Monitoring Officer after the next Council elections for the benefit of all new and existing councillors.

SUMMARY OF REPORT

On 23 December 2020, the Local Government Association (LGA) published a model Councillor Code of Conduct (the Model Code). The Model Code, attached at Annex A, is described by the LGA as “designed to protect our democratic role, encourage good conduct and safeguard the public’s trust in local government.” The LGA describes the development of the Model Code as being “in association with key partners and after extensive consultation with the sector, as part of its work on supporting all tiers of local government to continue to aspire to high standards of leadership and performance.”

All councils are required to have a local Councillor Code of Conduct and the Model Code is provided for use by councils as a template to adopt in whole and/or with local amendments should they wish to. It is the role of the Standards Committee to determine whether to recommend the Model Code, amended or otherwise to Full Council for inclusion in the Council’s Constitution.

While the Council administers code of conduct complaints on behalf of parish and town councils in the Borough, the adoption of a Code is a matter for each council.

The report presents the Model Code, compares it to the Council’s current Code of Conduct, attached at Annex B, raises specific issues to consider in relation to amendments and offers choices to the Committee. The report also includes at Annex C the results from the local consultation held in autumn 2020 on the best practice proposals from the Committee for Standards in Public Life.

BACKGROUND

1. The Community Vision and Corporate Delivery Plan were adopted in February 2020 and set out the strategic priorities for the council. It identified six key strategic themes:-
 - Safe, Strong Communities
 - Enriching Lives
 - A Clean and Green Borough
 - Right Homes, Right Places
 - Keeping the Borough Moving
 - Changing the Way We Work For You & Being the Best We Can Be
2. Full details of the Council's plan and the actions which will deliver these priorities are published on the Council's website. These themes/priorities and the Corporate Delivery Plan demonstrate how the Council meets its legal obligation to be efficient, effective and economical. This report concerns good governance in the Council and is relevant to the Corporate Priority, "Changing the Way We Work for You and Being the Best We Can Be."
3. The Localism Act requires all Councils to have a local Member Code of Conduct. The Council's current Code was adopted in 2012 and is largely based on the Council's Pre-Localism Act code (amended appropriately) and taking into account the advice which was in circulation at that time.

ANALYSIS OF ISSUES

New LGA Model Code

4. In its January 2020 report into Local Government Ethical Standards, the Committee for Standards in Public Life (CPSL) included a best practice recommendation for local authorities to adopt a Code of Conduct based on a model produced by the Local Government Association (LGA).
5. When researching the local Codes of Conduct, the CPSL found there was considerable variation in the length, quality and clarity of codes of conduct. They believed that this created confusion among members of the public, and among councillors who represent more than one tier of local government. This is a limited issue in Wokingham BC and for the other Berkshire unitaries. All six councils may have councillors serving on the Royal Berkshire Fire and Rescue Authority, and in Wokingham borough, we have 17 town and parish councils.
6. The LGA has produced a model code of conduct, which is based on the CPSL best practice recommendations and the expectation is that all councils should adopt it as a minimum, but with provision for additional local variations.
7. Discussions with Monitoring Officers from neighbouring authorities indicate a collective leaning towards adoption of the Model Code albeit with some variations. Most intend to take the issue to upcoming meetings of their Standards Committees (or equivalent).
8. Appendix C of the Model Code lists the CPSL's 15 Best Practice Recommendations and notes that the Government is yet to respond to the

recommendations made by CPSL, some of which require legislative changes. It should be noted that the Government's response, when it comes, may require a change to the Council's adopted Code. The date of the response is unknown.

9. One of the CPSL's best practice recommendations is that principal authorities should review their Code of Conduct annually and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities. Wokingham undertook a consultation in autumn 2020 on the CPSL's best practice recommendations the results of which are presented at Annex C.
10. The Committee should also consider how frequently the Code is to be reviewed. The annual review recommended by CPSL is best practice and there is clearly merit in ensuring that the Code is current and having an opportunity to deal with any obvious points that need amending. On the other hand, concern has been raised about the practicality and feasibility of annual reviews with consultation built in having regard to the work programme of the Committee generally. If an annual review is not considered feasible, a solution may be an annual light touch health check and a full review as recommended by the Monitoring Officer dependent on the issues which arise from its operation and the complaints received.
11. The Model Code:-
 - Continues to require upholding the Seven principles of public life (the Nolan Principles)
 - Contains twelve obligations with guidance
 - Sets out legal requirements
 - Defines a councillor as a member or co-opted member of a local authority
 - Is written in the first person
 - Sets out when the Code applies: 'acting in capacity as a councillor or representative of the Council', adds 'claiming to act', 'giving the impression you are acting' and 'referring publicly to your role as councillor or use knowledge you could only obtain in your role as a councillor'
 - Introduces:-
 - concept of 'acting with civility'
 - the word 'harassment' and a definition of bullying and harassment
 - reference to social media
 - specific reference to treating employees of the Council, partners and volunteers for the local authority with respect
 - under the Obligation to comply with the Code of Conduct: to undertake Code of conduct training, co-operate with any investigation or determination, not to intimate persons administering or investigating a complaint and to comply with any sanctions
 - Requires registration of gifts and hospitality with a value of £50 and over
 - Maintains the concept of 'bringing the council into disrepute'
 - Codifies the position on declaration and participation in relation to personal interests that already applies in the Council

Specific Issues for Consideration

12. There are several points to bring to the attention of the Committee for its consideration of whether local variations to the Model Code are appropriate.

Social Media

13. The Council's current Code does not mention social media and while that has not prevented consideration of code of conduct complaints arising from social media activity, it is helpful that the Model Code states that application of the Code extends to, "all forms of communication and interaction, including ... in electronic and social media communication, posts, statements and comments."
14. Whilst this reference makes it clear that social media activity is covered by the Code, it does not provide any guidance specific to social media on the issue of when a councillor is acting as a councillor, claiming to act as a councillor and/or a representative of the council, giving the impression you are acting that you are acting as a councillor and/or as a representative of your council and public reference to your role as a councillor or use knowledge that you could only use in our role as a councillor.
15. Respondents to the LGA consultation were evenly split about whether there was sufficient reference to the use of social media in the code and 69% (including the Council in its response) said social media guidance should be integrated into the Code. As there is no further guidance in the Model Code, and in response to the Committee's previous noting of an increase in complaints relating to Councillors' use of social media, there is a separate report on this meeting's agenda that addresses this issue.

Gift and Hospitality Threshold

16. The monetary threshold of £50 and over for registration of gift and hospitality in the Model Code is more than the £25 threshold in the Council's current Code of Conduct. To assist the Committee in determining the appropriate threshold, the LGA reports that over seven in ten respondents (72 per cent) supported £25 as the threshold for registering gifts and hospitality. 9% of respondents thought that the threshold should be lower than £25 while 16 per cent felt that it should be higher.

Dealing with Disrespect

17. Under the obligation of respect, the Model Code advises councillors to 'report' members of the public who are abusive, intimidatory or threatening to the local authority. Given the jurisdiction of the local authority and the police for example, consideration can be given to whether the word 'report' is amended to 'seek guidance from'. Alternatively, councillors could be encouraged to speak with the Monitoring Officer who is able to advise on such matters.

Exempt Information

18. When explaining the obligation in relation to 'Confidentiality and access to information' the Model Code refers to information that would be contained in what

is known as 'Part 2 papers' locally in the Council. This is information, that, in accordance with Schedule 12A of the Local Government Act 1972 and the Council's Access to Information Procedure Rules has been deemed to be exempt information and were historically presented on pink paper to councillors in advance of a meeting.

19. In the context of these constitutional Rules and the law, 'confidential' has a restricted meaning: 'information furnished to the Council by a Government Department upon terms which forbid the disclosure of the information to the public and information the disclosure of which to the public is prohibited by law or order of the Court'.
20. In practice, there is limited confidential information whereas exempt information, on the other hand, is in practice the majority of what is contained in pink papers. Exempt information is defined by seven categories which include legal professional privilege and information relating to the financial and business affairs of the Council.
21. The operation of this clause is quite complicated, and it contrasts with the plain English adopted throughout the rest of the document. It may be that the Committee wishes to adopt a more straightforward obligation on councillors when dealing with Exempt and Confidential information, namely to seek advice from the Monitoring Officer before releasing any paper which is marked, or could reasonably be assumed to be, confidential or exempt.

Feedback from Consultation

22. At its meeting on 2 March 2020, the Committee considered the WBC Code of Conduct for Councillors in light of the Best Practice principles set out in the report of the Committee on Standards in Public Life (CSPL).
23. The CSPL report (January 2019) had concluded that the vast majority of local government Members and Officers wished to maintain the highest standards of conduct. However, there were ongoing examples of bullying, harassment and disruptive behaviours. The CSPL also identified risks around conflicts of interest, gifts and hospitality and expressed concern about the increasing complexity of decision making which put governance procedures under increasing strain.
24. The CSPL report included a list of Best Practice principles and suggested that each local authority compare existing arrangements against the list. The CSPL report stated: "Our best practice recommendations are directed to local authorities, and we expect that any local authority can and should implement them".
25. At its meeting on 12 October 2020, the Committee agreed a public consultation exercise. The public consultation ran until 11 December 2020. A number of comments were received from Town and Parish Councils, individual Members from the Borough, Town and Parish Councils and members of the public. The consultation responses are set out at **Annex C** for the Committee's information.

OPTIONS

26. There are several choices open to the Committee:
- (a) recommend no change to the current Code of Conduct and resolve to continue with the existing Code of Conduct
 - (b) recommend to Council the adoption of the Model Code with or without potential amendments
 - (c) identify issues and ask for a report to come to a later meeting of the Committee that addresses those issues
 - (d) resolve to await the outcome of the Government consideration of the Committee for Standards in Public Life recommendations.

TIMETABLE FOR IMPLEMENTATION

27. Until such time as the Council agree to adopt a new or revised Code of Conduct the existing version will continue to meet the Council's statutory requirements.

OTHER IMPLICATIONS (COMMUNICATION)

28. Town and Parish Councils currently have a choice to adopt the Council's Code of Conduct or a model code produced by the National Association of Local Councils (NALC). The model code will apply to all levels of local government and when available, towns and parishes will need to decide how to proceed locally.

FINANCIAL IMPLICATIONS OF THE RECOMMENDATION

The Council faces severe funding pressures, particularly in the face of the COVID-19 crisis. It is therefore imperative that Council resources are focused on the vulnerable and on its highest priorities.

	How much will it Cost/ (Save)	Is there sufficient funding – if not quantify the Shortfall	Revenue or Capital?
Current Financial Year (Year 1)	£0	Yes	N/A
Next Financial Year (Year 2)	£0	Yes	N/A
Following Financial Year (Year 3)	£0	Yes	N/A

Other financial information relevant to the Recommendation/Decision

None

Cross-Council Implications (how does this decision impact on other Council services, including properties and priorities?)

Public Sector Equality Duty

Under the Equality Act 2010, Section 149, a public authority must, in the exercise of its

functions, have due regard to the need to—

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

An Equality Impact Assessment (EIA) is not relevant to this report.

Reasons for considering the report in Part 2

Not applicable

List of Background Papers

LGA Model Member Code of Conduct: Consultation response analysis, November 2020

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