



Governance and Audit Committee

Item
7

28 July 2020

Report of	Monitoring Officer	Author	Andrew Weavers ☎ 282213
Title	Local Government Association Consultation on Draft Model Member Code of Conduct		
Wards affected	Not applicable		

1. Executive Summary

- 1.1 This report informs the Committee of the consultation by the Local Government Association on its draft Model Member Code of Conduct.

2. Recommended Decisions

- 2.1 To review the Local Government Association's consultation on its draft Member Code of Conduct and make any comments they wish to inform a response.
- 2.2 That the Monitoring Officer finalises the Council's response in consultation with the Chair and Group Spokespersons.

3. Background

- 3.1 The Council adopted the Members' Code of Conduct in July 2012 and it forms part of the Constitution. Most Essex local authorities were covered by a single, jointly agreed Code of Conduct which was prepared by the Public Law Partnership with the aim of ensuring that councillors who were members of multiple authorities within the county were covered by a single code, providing clarity and consistency. The same Members' Code of Conduct was adopted by the majority of the parish councils in the Borough.
- 3.2 In early 2019 the Committee on Standards in Public Life published a report on standards in local government. They made a number of recommendations to local authorities, to the Local Government Association (LGA) and to central government. Central government has not yet responded to the recommendations so we do not yet know how it will react. This Committee agreed a response to that report.
- 3.3 The key recommendation to the LGA was that it should produce a model code for local authorities to consider adopting. At present the joint code originally produced in 2012 has been amended locally by some authorities to reflect their own circumstances over the years and consequently there is no longer a common code in the county. The Council via this Committee has kept our code under review but has not changed the wording.
- 3.4 Our starting point should therefore be that we would welcome the introduction of a model national code, in the hope that all Essex authorities will adopt it and that there would be consistency across the county.
- 3.5 If the LGA introduces a model code there is likely to be an increased expectation that authorities will use the national code, but there is no guarantee that this will happen. Early conversations with other Essex local authorities indicate that a significant number of

authorities are likely to adopt the LGA code, but this is of course dependent on the final content of the code and the views of those authorities at the time.

- 3.6 In June 2020 the LGA published a consultation draft of the code with a closing date of 17 August 2020. The LGA have published an on-line response questionnaire. The LGA documents can be accessed here:

<https://www.local.gov.uk/code-conduct-consultation-2020>

- 3.7 The draft code is longer than our current code because as well as including the “rules” there is a commentary. It appears from the consultation questionnaire, which asks “*Is it sufficiently clear which parts of the Model Code are legal requirements, which are obligations, and which are guidance?*” that the commentary is intended to be guidance, though the suggested answer to that question is “no”, although it would be simple to amend the draft to make it clear.
- 3.8 The draft code also has two appendices, one of which reproduces the “Nolan” principles (which are only a guide to interpretation) and another which sets out the rules relating to registration and declaration of interests.
- 3.9 Both our code and the draft LGA code have their roots in the former mandatory national code of conduct created by the Local Government Act 2000. This means that broadly the codes are similar but, as would be expected, there are a number of differences. The following table highlights the differences between our current code and compares it to the draft LGA Code, with a commentary.

Current CBC Code	Draft LGA Code	Commentary
Requirement to treat others with respect	Requirement to treat other members and the public with civility but treating employees, partners and volunteers with civility and respect to their role. Expanded wording makes it clear that members should not make unreasonable attack.	It is difficult to see why a two tier approach is appropriate. The current CBC wording derives from the old national code and has not caused difficulties in practice.
Requirement to uphold the law	Not included in draft LGA code.	The requirement to uphold the law is a useful reminder if a member were to seek to persuade officers to do something unlawful.
Requirement not do anything that would cause the Authority to breach any of the equality enactments	Not included in draft LGA code.	This is a useful specific clause and it would be helpful to include it.
Disclosure of information	Under LGA model code it would be necessary to demonstrate that a member believed information to be confidential.	It is not helpful to have to prove that a member believed something to be confidential, since a member can argue that they believed something was not confidential when it was clearly marked as such. The CBC wording is more detailed and based on the previous national code. It may be better to say that it is a breach to disclose believed that the Council if the Councillor knew or ought to have known

Current CBC Code	Draft LGA Code	Commentary
	<i>Includes provision for not bringing role as councillor or council into disrepute</i>	<i>Not currently in CBC code but would welcome its inclusion</i>
Not conferring an advantage or disadvantage on someone (including yourself)	Similar wording. Commentary says: Your position as a Member of the council provides you with certain opportunities, responsibilities and privileges. However, you should not take advantage of these opportunities to further private interests.	Some members may feel that this prevents them using skills and experience in other walks of life. That is unlikely to be what these words are intended to mean, but it is suggested that these are not included
When using CBC resources comply with our requirements and not use them improperly	There is a requirement not to misuse council resources. Limited commentary as to what this means and no requirement to comply with CBC requirements.	Draft does not provide for enforcement of any internal rules about resources. It would be helpful if this could be expanded.
Requirement to have regard to statutory publicity code	Not included.	This provision is not often relied upon, but it is a useful for this to have personal consequences for a councillor if they seek to abuse the statutory code and it would be preferable if the LGA code could include it.
Requirement to register gifts and hospitality of over £50	Included. Additional requirement not to accept significant gifts or hospitality from people who may apply to council for any permission licence or other significant advantage	One of the consultation questions is whether the £25 limit should change. It is not clear whether the requirement to refuse hospitality is helpful – term “significant advantage” is unclear - does it include current potential contractors and partner organisations?
Code interests (as opposed to disclosable pecuniary interests) are: <u>Pecuniary interests:</u> in any business of the Authority where it relates to or is likely to affect: (a) any person or body who employs or has appointed you; (b) any contract for goods, services or works made between the Authority and you or a firm in which you are a partner, a company of	Other registerable interests are only: (i) Any body 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; (ii) Any body: (a) exercising functions of a public nature; (b) directed to charitable purposes; or	Under the draft, tenders and contracts and contracts with subsidiaries are not required to be registered. However, members would still have to register current contracts as a disclosable pecuniary interest.

<p>which you are a remunerated director, or a person or body of the description specific in paragraph 6.2.(g) which has been fully discharged within the last 12 months;</p> <p><u>Pecuniary Interests</u></p> <p>in any business of the Authority where it relates to or is likely to affect:</p> <p>(a) any body 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 Authority;</p> <p>(b) any body –</p> <ul style="list-style-type: none"> (i) exercising functions of a public nature; (ii) directed to charitable purposes; or (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union); of which you are a member or in a position of general control or management; <p>(c) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £50;</p> <p>(d) a decision in relation to that business which might reasonably be regarded as affecting your wellbeing or the wellbeing of a relevant person to a greater extent than the majority of:-</p> <ul style="list-style-type: none"> (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or 	<p>(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)</p> <p>of which you are a member or in a position of general control or management.</p> <p>Not included</p> <p>Someone with an “other” interest can only exercise same rights as member of public i.e. they can only speak where the public can take part and they cannot vote.</p>	<p>This is a stricter test than the CBC code, the interest could be trivial and could deprive a member of a vote. Unclear whether it is lawful to deprive a member of a vote if they are allowed to be in the room.</p>
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(ii) (in all other cases) other council tax payers, ratepayers or inhabitants of the Authority's area.		
Monitoring Officer can give dispensations for interests	Unclear whether dispensations allowed for other interests	Power to grant dispensations for "other" interests must be included in the draft.

- 3.10 The LGA consultation also contains a suggested internal resolution procedure to address conduct that is in breach of the Member Code of Conduct. The Council is already required by law to have one in place under its Localism Act Arrangements which are kept under annual review by this Committee. The suggestions do not include binding sanctions which is something that the Committee on Standards in Public Life had included in their consultation and whether they should be introduced for serious breaches of the Code. In our response we stated that sanctions should be introduced including the ability to suspend in specified circumstances, whilst acknowledging that this would require a change in the law.
- 3.11 The closing date for receipt of comments by the LGA is 17 August 2020 and all councillors are encouraged to submit their own individual responses. It is suggested that the Monitoring Officer collates a response to the questionnaire following its consideration of the paper on behalf of the Committee, in consultation with the Chair and Group Spokespersons.

4. Strategic Plan References

- 4.1 The manner in which the Council governs its business is an underpinning mechanism in the Council's Strategic Plan aims to set out the direction and future potential for our Borough.

5. Financial, Publicity, Equality, Diversity and Human Rights, Consultation, Health, Wellbeing and Community Safety, Health and Safety and Risk Management, Environmental and Sustainability Implications

- 5.1 None identified.

6. List of Background papers/Appendices:

Appendix 1 CBC code

[MembersCodeofConduct.pdf](#)

Appendix 2 Draft LGA Code (including appendices)

<https://www.local.gov.uk/sites/default/files/documents/LGA%20Model%20Member%20Code%20of%20Conduct.pdf>

Appendix 3 - LGA consultation questionnaire (to be completed online:)

https://research.local.gov.uk/jfe/form/SV_blupYNXmiJ0xECV