

Application of the Code

Under the Localism Act 2012, the Code of Conduct applies to councillors only when they are acting in their capacity as a member. The LGA believes that because councillors are elected by the public and widely recognised by the public, it makes sense for them to continue to model these behaviours when they are making public comment, are identifying as a councillor and when it would be reasonable for the public to identify them as acting or speaking as a councillor. The Committee on Standards in Public Life supported this approach in their report into Local Government Ethical Standards. Whilst the LGA is waiting for Government's response to these recommendations the option has been added in square brackets as it would need changes in legislation.

Q1. 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?

- ☒ To a great extent
- ☐ To a moderate extent
- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/prefer not to say

Q1a. If you would like to elaborate on your answer, please do so here:

It is noted that this is a proposal and requires amendment to legislation. The public should be able to expect the highest standards of behaviour from their elected representatives and there should be clarity as to when the behaviours apply.

This wording gives more clarity on when the Code applies when using Social media with a positive presumption, but each case will still need to be considered on its facts and there is a question about how those elected to public office are ever able to have a private life in the context of social media platforms in light of such a presumption.

There may also be some difficulties in ascertaining what constitutes 'giving the impression that they are acting as a councillor'. If members have indicated that they are acting or have referenced their role as a Councillor explicitly then this gives some clarity, but there remains room for significant subjectivity regarding when someone might give the impression that they are acting in their official role. The question arises as to in whose

judgement that impression is created? Is it the complainant, the Monitoring Officer or the subject member? Our response is that this should be more carefully defined and limited to where there has been explicit reference rather than subjective judgements where there is great scope for divergent views.

Q2. Is it sufficiently clear which parts of the Model Code are legal requirements, which are obligations, and which are guidance?

☐ Yes

☒ No

The wording could be made clearer that the specific obligations must be complied with whereas the rest of the Code is for guidance only. It is clear that compliance with the twelve obligations is required as it states that that section sets out the minimum standards. However, there is reference to the Nolan Principles which are then set out in an Appendix, but it seems that compliance with these isn't required. It is therefore a little unclear as to what constitutes the Code and what is background. To a complainant, the bullet points on page 3 are likely to give the impression that each one is an absolute requirement where contravention could amount to a breach. It should be made clearer what is the status of the principles and bullet points on page 3 to avoid confusion and the potential for misplaced expectations.

The Introduction section on Page 2 also raises the issue around the voluntary nature of the Code and the fact that it may or may not be adopted by Councils, in whole or in part and they may adapt it locally. The CoPSL's reason for recommending a standardised code was to get away from the widespread divergence in local codes and to bring some level of consistency. Our position is that a national code should be a mandatory minimum with local adjustments which may add to, but not take away from, these minimum standards.

There needs to be much greater clarity of when the Code is engaged so that Monitoring Officers can readily rule out matters which do not engage the Code. The section on application on page 3 suggested that members should uphold high standards "at all times" which indicates those standards must be maintained even when out with friends or on a golf course or some other wholly private capacity. This Council's view is that these standards should only be engaged where members are clearly acting in an official capacity or the member has explicitly referred to their role.

In this respect it would also be helpful to have some text included to deal with Councillors' wearing multiple hats and that a complainant should not be able to seek redress against the same councillor conduct at each of Parish, District and County levels via their different codes of conduct. This can be particularly problematic when dealing with a "bringing the Council into disrepute" claim which could apply equally to all 3 different councils and would be difficult to rule did not apply to one Council if the provisions for "giving the impression" are left in the Code. In such circumstances it should be possible for the Monitoring Officer of each body to discuss with one another and agree which of them will deal with the allegation depending on the facts of the case.

Q3. Do you prefer the use of the personal tense, as used in the Code, or would you prefer the passive tense?

- ☒ Personal tense (“I will”) – This reinforces the personal responsibilities that Councillors have in respect of compliance with the Code.
- ☒ Passive tense (“Councillors should”) – This would make more sense to complainants and Monitoring Officers using the code so there are arguments either way. A compromise would be for the Code to be written in the passive tense with an appendix setting out a Councillor’s commitment which clearly states all of the key obligations and that could be written in the personal tense for members to then sign when they take office.
- ☐ No preference

Specific Obligations

The Code lists 12 specific obligations – these set out a minimum standard councillors are asked to adhere to.

Each obligation or group of obligations is put into a wider context to explain why that particular obligation is important.

Q4. To what extent to you support the 12 specific obligations?

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know / Prefer not to say
1. Treating other councillors and members of the public with civility.		X			
2. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.		X			
3. Not bullying or harassing any person.	X				

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know / Prefer not to say
4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.	X				
5. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.	X				
6. Not preventing anyone getting information that they are entitled to by law.	X				
7. Not bringing my role or council into disrepute.		X			
8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.	X				
9. Not misusing council resources.	X				
10. Registering and declaring my interests.		X			
11. Not accepting significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.	X				

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know / Prefer not to say
12. Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.	X				

Q5. 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:

Additions that maybe useful and are currently in our Code of Conduct are:

- (a) you must not place yourself under a financial or other obligation to outside individuals or organisations that might seek to influence you in the performance of your official duties;
- (b) when carrying out your public duties you must make all choices, such as making public appointments, awarding contracts or recommending individuals for rewards or benefits on merit; and
- (c) you are accountable for your decisions to the public and you must cooperative fully with whatever scrutiny is appropriate to your office.

These may well be covered under more general provisions, for example, the first one maybe covered by the gifts and hospitality provisions, but the specific obligations reinforce the position and are wider than just the provision of gifts and/or hospitality.

The principle of "Civility" is discussed further below, the moderate support for this concept is around how it is defined and the scope for confusion rather than the concept itself. It is suggested that civility is quite subjective and if this concept is to be used would benefit from a minimum threshold to avoid spending valuable time and resources investigating minor or non-material incivilities (e.g. failure to respond to a letter as opposed to a persistent failure to respond to multiple reminders). It may be advisable to have a way of addressing persistent cumulative low level incivilities however.

Q6. 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?

- ☐ As a list
- ☒ Each specific obligation followed by its relevant guidance – This makes for greater clarity.
- ☐ No preference

Q7. To what extent to you think the concept of 'acting with civility' is sufficiently clear?

- ☐ To a great extent
- ☒ To a moderate extent
- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/prefer not to say

Q7a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

It is defined, so it is clear what is meant, but it is not a word used in common parlance. The definition includes courtesy and that would be a better word to use as it is more commonly used and understood. In addition, there is no threshold set out in relation to how this will be judged so on the face of it, minor and inconsequential things will be covered. Some sort of threshold therefore needs to be set out to cover this and perhaps other provisions. It may be viewed as a lower level (and therefore greater likelihood of breach) than the current concept of respect – consideration may need to be given to whether this will be too low a level.

Q8. To what extent do you think the concept of 'bringing the council into disrepute' is sufficiently clear?

- ☐ To a great extent
- ☒ To a moderate extent
- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/prefer not to say

Q8a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

It is a phrase that has been used in the past so there is a certain level of understanding of it. However, it could do with further explanation in the Code as it covers more than dishonest and/or deceitful behaviour. It covers not being respected or trusted and goes to the core of the Council's reputation. This needs to be spelled out as it is a common allegation made in complaints and there needs to be clarity in its scope and application. It is not clear why it is limited to dishonesty and/or deceitful behaviour and often

disrespectful and/or uncivil behaviour or bullying/harassment may be seen as bringing the Council into disrepute. Some sort of threshold or clarifying wording in the supporting text might assist e.g. Likely to have a material impact on the way in which the role of Councillors or the Council is viewed by the public at large.

Q9. To what extent do you support the definition of bullying and harassment used in the code in a local government context?

- ☐ To a great extent
- ☒ To a moderate extent
- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/prefer not to say

Q9a. If there are other definitions you would like to recommend, please provide them here.

Additional guidance could be given with worked examples to reinforce the definitions. Also, consideration should be given to including within this section an obligation not to discriminate against any person and have corresponding commentary on this. The current reference to protected characteristics in the context of bullying and harassment is different to an absolute requirement not to discriminate (regardless of whether bullying or harassment may be taking place).

Q10. Is there sufficient reference to the use of social media?

- ☐ Yes
- ☒ No
- ☐ Don't know/prefer not to say

Q10a. Should social media be covered in a separate code or integrated into the overall code of conduct?

- ☐ Separate code
- ☐ Integrated into the code
- ☒ Don't know/prefer not to say

Q10b. 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:

There are arguments both ways. If it is part of the Code then it is easily accessible and can be seen as an integral part of the Code. However, if it is lengthy then this may detract from other provisions in the Code. A compromise maybe to have a stronger reference to it and the need for a specific policy in the Code but then for the detail (including a suggested standard policy wording which is currently in development by Lawyers for Local Government) to be included in an appendix.

In terms of the presumption that members are acting in their official capacity whenever they are on social media, a reference to proportionality or some sort of threshold would assist if the presumption is to remain. Also, the issue of goading members on social media platforms may warrant further consideration. Having to maintain such high standards “at all times” and in the face of provocation seems a very high bar to meet. See also answer to Q1a.

Registration and declarations of interests

The law at present requires, as a minimum, registration and declaration of ‘Disclosable Pecuniary Interests’ - that is, matters which directly relate to the councillor and their partner if applicable.

The LGA is proposing that all councillors are required to declare interests where matters also relate to or affect **other family members or associates**. The LGA has broadened the requirement to declare interests beyond this current statutory minimum in line with a recommendation from the Committee on Standards in Public Life. These specific provisions are set out in **Appendix B** of the Code.

Q11. To what extent to you support the code going beyond the current requirement to declare interests of the councillor and their partner?

- ☒ To a great extent
- ☐ To a moderate extent
- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/prefer not to say

Q11a. If you would like to elaborate on your answer, please do so here:

This assists in transparency as an interest of a partner may well have a bearing on a Councillor’s view on an issue or maybe judged to be so by a member of the public. However, further clarity on what would constitute a family member (e.g. how far removed from the member would count?) or close associate, otherwise a great deal is left to the subjective views of individual Councils. I.e. should there be a “would you have dinner

with them” test? There is also the question of the extent to which family members know one another’s business or financial activities.

Q12. 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?

- ☒ In the main body of the code
- ☐ In the appendix
- ☐ Other (please specify below)
- ☐ Don't know/prefer not to say

Q12a. If you would like to make any comments or suggestions in relation to how the requirement to declare interests is covered in the code, please do so here:

This is a fundamental obligation on Councillors and should be in the main body of the Code. This has been the practice for many authorities in the past and if it were to be relegated to an appendix then it dilutes its significance.

The reference to breach being a criminal offence should be clear and bold in the first part of the main code obligations and the table of interests should be included in the code or the appendix specifically referenced in the first part not at the end. This, together with other obligations should be seen as the minimum requirements to be complied with. Councils should be permitted to add to it to adapt it to their requirements, but they should not be able to dilute it or take away from the minimum obligations.

The Code also proposes that more outside interests should be registered than is the current statutory minimum. These are set out in Table 2 of the Appendix and are designed to demonstrate to the community transparency about other bodies with which the Councillor is engaged. Further comments on this are in the response to Q13.

Q13. To what extent do you support the inclusion of these additional categories for registration?

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know / Prefer not to say
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		X			

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		X			
Any organisation, association, society or party directed to charitable purposes		X			
Any organisation, association, society or party of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)		X			

Q13a. If you would like to propose additional or alternative categories for registration, please provide them here:

Some authorities included those obligations previously and it makes for a more comprehensive suite of categories. However, Table 2 on page 12 creates some confusion – does the bold coloured heading section at the top mean that all of the categories below only apply if the member has been appointed to those bodies by their Council? Or is that a separate category in the section below which would be quite different if they apply to membership in a personal capacity, not as a Council appointee.

If these categories are to be included, then they should not be classed as personal interests as members are appointed to these roles by the Council and the vast majority are not remunerated (save for minor expenses). Only remunerated roles which provide a direct financial benefit to the members should be DPIs and these other categories should be designated as “Council related interests”.

Greater clarity should be included in the Code of what type of interest to declare and when and whether members need to withdraw and not vote. There should be DPIs (withdraw and not vote) (Council related interests – declare, remain and vote unless a remunerated position) and Private Interests for other non DPI interests (declare but remain and vote unless risk of predetermination or bias). Further reference to the need for members to consider whether they are approaching a matter with an open mind or are likely to be pre-determined or biased, should also feature as a paragraph under declaring interests.

Q14. To what extent do you support the proposed requirement that councillors do not accept significant gifts as set out in Obligation 11?

- ☒ To a great extent
- ☐ To a moderate extent

- ☐ To a small extent
- ☐ Not at all
- ☐ Don't know/prefer not to say

Q14a. If you would like to elaborate on your answer please do so here:

Councillors should not put themselves under an obligation to others or for it to appear that they have. This is consistent with this principle. However, the use of the word “significant” leads to further subjective judgements. It would be better to have a set value or limit and then members and the public will have greater clarity. Alternatively, some further definition by reference to some objective criteria would assist. The role of Civic heads and Leaders of Councils should perhaps be distinguished by an exception to ensure that gifts and hospitality offered as part of those roles should be declared but may still be accepted, even if over the set threshold for significance (which we would suggest is set at £50).

Q15. The draft code proposes £25 as the threshold for registering gifts and hospitality. Is this an appropriate threshold?

- ☒ Yes – but the amount should be reviewed annually with the Code’s review.

Currently, our Council requires all gifts of whatever value, whether accepted or not to be registered. This is consistent with the principle of transparency. However, for simplicity’s sake it may be better to have one threshold for accepting and registering gifts/hospitality subject to any exception about acceptance for Civic heads/Leaders.

If the word is to remain then what is ‘significant’ should be defined. It should be made clear that money should never be accepted by members.

Also, the position with regard to such people as the Chairman and VC and the Leader/Deputy Leader of the council should be clarified as they will be invited to many events because of the position that they hold. Do they need to register everything over that threshold?

Finally, a distinction should be drawn between a personal gift and a gift to the council.

- ☐ No, it should be lower (please specify amount) _____
- ☐ No, it should be higher (please specify amount) _____
- ☐ Don't know/prefer not to say

Q16. 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.

5 ___ Regularly updated examples of case law

1 ___ Explanatory guidance on the code

2 ___ Case studies and examples of good practice

3 ___ Supplementary guidance that focuses on specific areas, e.g., social media

4 ___ Improvement support materials, such as training and e-learning packages

Q16a. If you would like to suggest any other accompanying guidance please do so here:

It may be useful to have regular webinars and sharing of experiences between authorities.

Q17. If you would like to make any further comments about the Code, please do so here:

With regard to Obligation 4 about not compromising or attempting to compromise the impartiality of anyone who works for or on behalf of the council, the obligation should be extended to include both impartiality and 'professional integrity'.

Obligation 6 should make it clear as to what information it applies to. It should be information that relates to members' role as a Councillor, or otherwise held on behalf of the Council.

Obligation 8 should be linked to the declaration of interests and then to the Appendix.

The role of the IP should be clarified. It was recommended by the CoSPL that the role would be enhanced.

Obligation 9 could be expanded to allow for Councils to develop local protocols on the use of resources like Nottinghamshire has. The supporting text could also benefit from referencing the Code on Local Authority publicity prohibitions on using Council resources for party political purposes.

It is noted on the 'sanctions' section that there is no bar on attending full council – probably because of the democratic role of councillors. It is not clear why there is only a bar on chairing advisory and special committees and not other committees. Also, what would be the position in relation to Vice Chairmen of these committees?

The bar on contact with an individual employee needs to be time limited. Also, how could a committee be operated if this related to the Chair of a committee and the Monitoring Officer or other lead officer? It may be that such situations would be better dealt with by training and a public or private apology depending upon what was appropriate in the circumstances. Peer support needs to be clarified.

In order to deal with more straight forward matters perhaps some standard sanctions could be available once a prima facie case has been established e.g. minor rudeness

requires a personal verbal or written apology.

Table 2 needs to clarify what sort of interest is created so that members know what they are permitted to do. It may be that in the case of these interests, the member only needs to declare it at the meeting but can remain in the meeting and vote.

In terms of the Internal Review Procedure, this and the role of the Independent Persons could do with greater clarity. The IRP is to allow for appeals against allegations and decisions. This lacks clarity. Are subject members to be entitled to appeal allegations? How would this work? Can complainants and subject members appeal decisions or just subject members? It is currently helpful to be able to rule that the Monitoring Officer's decision is final so that relatively less substantial complaints can be quickly and efficiently addressed. It would be disproportionate to have appeals for this type of matter. Was the intention to link a right of appeal for subject members to more significant sanctions only – i.e. where a bar on chairing or attending Committee was proposed? That appears to have been the intention of the CoSPL report. If so, this should be clarified in the Code to avoid misunderstanding and to properly manage expectations.

In terms of sanctions it is suggested that there should be scope for censure – and for an explanation of what that means and for either a verbal or written apology which could be either personal or public depending on the circumstances.

On the whole and subject to the comments above, the Code marks an improvement, but it is formatted in an unfamiliar way. The two column format is unhelpful when reading the document online which most people will need to do in future. Hopefully the consultation will address this and will also assist in ensuring that all major points are covered in one document so that it is as comprehensive as possible.