

21 July 2020**Agenda Item:****REPORT OF THE MONITORING OFFICER****LOCAL GOVERNMENT ASSOCIATION - CONSULTATION ON DRAFT MODEL
MEMBER CODE OF CONDUCT****Purpose of the Report**

1. To inform members of the Local Government Association (LGA) consultation on the Draft Model Member Code of Conduct and agree the responses to the consultation.
2. To approve the general content of the consultation response and to authorise the Monitoring Officer to finalise the detailed drafting of the response in consultation with the Chairman prior to submission to the LGA.

Information

3. In May 2018, this Committee considered the consultation document on local government ethical standards issued by the Committee on Standards in Public Life (CoSPL) and agreed a response. In May 2019, it considered the CoSPL's report. The CoSPL considered that high standards of conduct in local government were needed to protect the integrity of decision-making, maintain public confidence and safeguard local democracy. They were concerned about a risk to standards under the current arrangements, as a result of the current rules around declaring interests, gifts and hospitality and the increasing complexity of local government decision-making. They made 26 recommendations.
4. The CoSPL was concerned that, although local authorities are required to have in place a code of conduct, there was considerable variation in length, quality and clarity. They considered that many codes failed to address adequately important areas of behaviour such as use of social media and bullying and harassment. It was therefore recommended that the LGA should create an updated model code of conduct. However, the CoSPL stated that any model should be capable of adaptation so that local authorities were able to take ownership of their code. The Draft Model Member Code of Conduct produced by the LGA is attached at Appendix 1. In order to assist the process of commenting on the Draft Model Member Code of Conduct the LGA has produced a questionnaire to be completed. This is attached at Appendix 2. It should be noted that this report relates to the County Council's response to the consultation and that the suggested response set out in the draft at Appendix 2 is subject to members' views and agreement on any changes they would prefer to see included. Members may also respond individually or as a group.

5. The questionnaire addresses key areas that the LGA are consulting upon in order to inform the final version of the Code. The Code begins with an introduction which refers to the Code being “offered as a template for Councils to adopt in whole and/or with local amendments”. It is suggested that this should be clarified and that in order to meet the CoSPL’s identified concern around variations in code contents, the draft code once finalised should operate as a minimum requirement for all Councils, with local adaptations only adding to and not taking away any of the standard content.
6. Page 3 of the Code then continues by setting out general principles in respect of standards of behaviour, including references to the Nolan principles of standards on public life. It is suggested that there should be greater clarity within the Code about whether these principles serve only as general background against which the following section should be read or whether breach of these elements of the Code may also result in complaints for consideration and subsequent action under local code procedures. The draft then goes on to detail 12 specific obligations which councillors are asked to commit to, and comments are requested on those obligations. Further detailed comments are requested on particular aspects, for example, whether the concept of ‘acting with civility’ and ‘bringing the council into disrepute’ are clear. Specific comments are also requested in relation to the definition of bullying and harassment, which is a key matter that the CoSPL considered should be included in any new Model Code.
7. Members will see from the suggested responses that further clarity would be helpful for the concept of “civility”. This could be done by either by changing the definition to remove reference to the Code applying when members are “giving the impression” that they are acting in the fulfilment of their official role, which is a rather subjective judgement. Alternatively, members may feel that some sort of threshold level would assist to avoid very minor incivilities becoming the subject of complaints, whilst retaining scope for consideration of the cumulative effect of persistent low level infringements.
8. With regard to bringing the Council into disrepute, it is suggested that this should not only be linked in the guidance to deceitful or dishonest behaviour but to cover any behaviour which might cast the role of Councillors or their Council in a dim light. If a broader context is set for this obligation it is again suggested that a threshold of some sort be included to avoid complaints about minor or immaterial issues, to manage the expectations of the public and members alike and also to ensure that the process of considering and possibly investigating complaints is limited to those issues of a material nature.
9. In terms of bullying and harassment, it is suggested that this should include a specific reference to discrimination as the current links to protected characteristics in the context only of behaviour that is bullying, or harassing does not seem broad enough to capture any discriminatory behaviour.
10. The use of social media is highlighted, and comments are requested on whether there is sufficient reference to it. It also asks whether social media should be covered in a separate code or integrated into the overall code of conduct. The proposed response suggests that a compromise approach would be to have stronger reference to the impact of social media in the Code and the need for a specific policy but then to reference the detail, including a suggested standard social media policy wording, within a separate appendix. It should be noted that LLG (Lawyers in Local Government) are currently working on a policy and guidance on use of social media which is expected to be ready at the end of July.

11. There is also a presumption in the new Code that members are acting in an official capacity whenever they are on social media platforms. This is suggested as being too invasive into the private lives of members and would mean that they must first overcome the presumption that they were acting in an official capacity to enable Monitoring Officers to determine that the incident was not caught by the Code. It is important that members aim to maintain high standards at all times as local leaders and role models, however it is suggested that members are entitled to some degree of private life where those standards may not always apply. In order to achieve some balance in this area, the response is suggesting that either the concept of proportionality or a threshold is introduced to ensure that it is clear that members are acting in an official capacity.
12. There is greater detail on declaration of interests and the LGA has broadened the requirement to declare interests beyond the statutory minimum in line with the recommendations from the CoSPL. It also includes additional categories for registration of interests. These provisions are included in Appendix B of the Code. Specific questions are posed about these provisions and where they should sit in the Code. The suggested responses request greater clarity on what would constitute a family member or close associate so that is not left to local interpretation and so members and the public alike are then clear on expectations around when interests must be registered and declared. In terms of the need for registration and declaration of interests where members have been appointed to sit on outside bodies as representatives of the Council in unremunerated roles, it is suggested that these should form a different class of interests where members declare their interests in meeting but are able to remain and vote as they will most likely have the greatest insight to share with fellow members.
13. Comments are requested on the acceptance of gifts and hospitality. There are two proposed requirements here; firstly, a requirement not to accept any “significant” gift and secondly a threshold of £25 for the registration of gifts which have been received. The consultation requests comments on whether it is an appropriate sum. The proposed response suggests that the term “significant” is vague and lacks clarity for members and the public around what is expected. Instead, either a defined sum or a way to assess significance by way of objective criteria is suggested.
14. Members’ views are sought on the appropriate threshold and the draft response suggests that there be some exceptions in the case of Civic heads, such as Chairman and Vice Chairman of Councils and Leaders who are often invited to events as representatives of the Council where there is a high expectation of attendance and where gifts are often offered and would cause offence to official visitors or groups, if refused. Provided such gifts/hospitality are registered if over the relevant threshold, it is suggested that such exceptions would assist in providing clarity to current arrangements. Finally, the response also includes the suggestion that no money of any value should ever be accepted by members. This offers clarity and protection to members and is consistent with the Council’s obligations in respect of bribery and corruption legislation.
15. With regard to some of the proposed changes, legislation is required, for example, when the Code applies as changes need to be made to Section 27 of the Localism Act 2011 to accommodate this change to include a presumption that councillors are acting in an official capacity at all times. The draft response suggests this goes too far and that there should be clarity over when members are caught by the code in their official roles and when they are not, rather than leaving this always to subjective judgements of Monitoring Officers whose role it is to assess initial complaints to ensure they are caught by the Code before taking further action.

16. Members views are also sought on the way in which the code is written – in the personal tense “I will” or the passive tense “Councillors should”. There are arguments either way which are set out at question 3 of the questionnaire and members are asked to determine which of these they feel is most appropriate.

Other Options Considered

17. The Council could choose not to engage with the consultation and to leave it to individuals to provide a response, however it is felt more appropriate to provide feedback on the proposals as they stand to assist in shaping an improved end product. Further consideration will be given to local arrangements following the finalisation of the LGA Code of Conduct and any changes to primary legislation which may come forward from Government.

Reason/s for Recommendation/s

18. To provide a response to the LGA consultation on behalf of the County Council.

Statutory and Policy Implications

19. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance, finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

It is recommended that:

- 1) Members note the content of the Draft Model Member Code of Conduct and consider the responses to be submitted to the LGA as part of the consultation process.
- 2) Approve the general content of the consultation response and authorise the Monitoring Officer to finalise the detailed drafting of the response in consultation with the Chairman prior to submission to the LGA.

Marjorie Toward

Monitoring Officer and Service Director – Customers, Governance and Employees

For any enquiries about this report please contact:

Linda Walker, Solicitor (Corporate & Environmental Law)

linda.walker@nottsccl.gov.uk

0115 9772438

Constitutional Comments

LW 24/06/2020

Governance and Ethics Committee is the appropriate body to consider the content of the report.

Financial Comments

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- The Local Government Ethical Standards Review is published
<https://www.gov.uk/government/publications/local-government-ethical-standards-report>

Electoral Division(s) and Member(s) Affected

- All