

22 March 2023

Agenda Item: 9

REPORT OF THE MONITORING OFFICER

NEW CODE OF CONDUCT FOR COUNCILLORS AND CO-OPTED MEMBERS

Purpose of the Report

1. To update Committee on the work of the Members Working Group reviewing the Local Government Association (LGA) Model Code of Conduct for Councillors (the Model Code) and its adaptation for use by Nottinghamshire County Council as its Code of Conduct for Councillors and Co-opted Members (the Nottinghamshire Code).
2. To seek approval in principle of the draft Code attached to the report as **Appendix 1** and to recommend its adoption to Full Council, together with a plan for training and familiarisation for Councillors, Co-opted Members and relevant Officers.

Information

3. In January 2019 the Committee on Standards in Public Life (CoSPL) made recommendations regarding Local Authority standards following a period of review and consultation which it had previously carried out. One of the CoSPL recommendations was that a national model code of conduct should be developed to assist with improving consistency across Councils of their Codes of Conduct, against which member standards are assessed.
4. Following publication of the above recommendations, the LGA undertook a process of developing a Model Code and associated guidance. A draft was developed and consulted upon by the LGA during June 2020, which then resulted in a final published Model Code in December 2020. Subsequent amendments were made to the Model Code in January and May 2021.
5. Members may recall that work was undertaken with a cross party members working group (MWG) before the last County Council elections in 2021 to review the new Model Code. That working group comprised the former Chairman and Vice Chairman of the Governance and Ethics Committee, Group Business Managers as well as the two non-aligned independent members of the Council at that time.
6. The original working group met during February and March 2021 to consider different aspects of the Code and in particular, whether there were any matters from the Council's current Code of Conduct which would be helpfully retained for inclusion in the new Code.

7. As a result of their work, the MWG reached the preliminary conclusion that it would be advisable for the Model Code to be adopted by the Council with only a few minor local variations. Those variations were to retain wording from the existing Nottinghamshire Code where it was felt that the Model Code did not adequately address those issues and/or where the wording provided useful and well established provisions which it was felt, would improve upon the wording in the Model Code.
8. This approach to adopting either wholly or largely the same wording as the Model Code means that the Council can rely more closely on the LGA guidance and will be more consistent with many other authorities whose codes also follow the Model Code.
9. The work was then paused whilst the MWG awaited publication of the LGA guidance to accompany the Model Code. This guidance was published in the July 2021, shortly after the Council elections in May 2021. After the summer recess, in September 2021, a decision in principle was taken that the Council should move to the Executive form of governance arrangements and as a result, the work relating to the Nottinghamshire Code was paused whilst officers worked at pace to develop proposals for Executive arrangements, which were subsequently approved at meetings of Council in March and May 2022.
10. Following a period of settling in of the new executive arrangements after their implementation on 12th May 2022, officers were able to refocus their attention on the Code of Conduct once more. The MWG established to consider the change in governance arrangements then continued this work and met in October 2022 and again in early March 2023. In addition, officers met with the Council's 3 Independent Persons on 22 February, to discuss the proposed changes to the Nottinghamshire Code as well as the general approach to complaints handling and received helpful feedback which was reported to the next MWG meeting.
11. The working group were provided with the latest information which the previous MWG had considered, as well as additional information, including the following:
 - a. The Council's current Code of Conduct for Councillors and Co-opted Members
 - b. A version of the Model Code marked up to show where minor local adjustments were proposed;
 - c. LGA guidance for the Model Code
 - d. A flowchart relating to the Council's proposed approach to complaints handling
12. The working group agreed with the position adopted by the previous working group that the Council should in the main follow the Model Code drafting. However, some issues were raised about specific points, including the way in which the issue of Disrepute was addressed in the Model Code. Slight adjustments to that definition have been made with the aim of ensuring that members feel confident that inadvertent comments made during the cut and thrust of debate would not trigger a breach of the Code under that particular principle.
13. The areas in which the proposed new Nottinghamshire Code departs from the Model Code are shown in tracked changes in the Document attached as **Appendix 1**:
14. The MWG were also asked to consider whether the LGA guidance necessitated any further changes to the draft Nottinghamshire Code. A view was taken that as the proposal was to

adopt the Model Code only with minor local variations, it would not be necessary to make any further changes.

15. Officers also indicated that the LGA had also developed extensive guidance for handling complaints made under the LGA Model Code. As a result, it was considered appropriate to review the Council's own complaints handling arrangements in light of that guidance and the changes in governance arrangements and to ensure that the arrangements were fit for purpose moving forward. Given the complexity and length of the guidance it was felt that although the Council process would benefit from additional stages being incorporated, a simplified approach to setting out those stages may be more helpful at this time both for members and the general public.
16. The MWG reviewed a draft flowchart setting out the key procedural aspects for complaints handling. It was agreed that this would be a useful way of setting out the key elements of the procedures together with timescales for relevant stages (subject to amendment in appropriate circumstances at the Monitoring Officer's discretion). The draft flowchart is appended at **Appendix 2** and subject to members agreement, will form the basis of new procedures to be developed by the Monitoring Officer under the proposed delegations set out below.
17. As part of the consideration of the Code, a tiered approach to managing and approving documentation relating to the Code is now proposed. The main Nottinghamshire Code clearly requires approval by Full Council as part of the Constitution. However, the Protocols that sit beneath the Code fall within the terms of reference of Governance and Ethics Committee and as they are more likely to require updating this seems to be the most appropriate level at which approval of those matters should sit.
18. Beneath the Protocols, it is proposed that any procedures or guidance for Members or Officers for managing issues relating to the Code or Protocols should be delegated by Committee to the Monitoring Officer, in consultation with the Chairman of Governance and Ethics Committee where appropriate. It is suggested that this proportionate approach enables greater responsiveness and flexibility in how documents are developed and approved to underpin the mechanisms to support the Code.

Training

19. The proposal to adopt the draft Nottinghamshire Code will require compulsory training by Members, which is enshrined as part of the terms of the Model Code. This will mean that the Monitoring Officer will want to ensure that members have received appropriate training on the way in which the Nottinghamshire Code works. The Independent Persons also expressed a desire to be involved in that training to give their perspectives and explain a bit more about their roles within the process.
20. It is therefore proposed that appropriate training be arranged for members which must be undertaken as soon as practicable.

Declarations of Interests

21. The Model Code also contains different requirements regarding the disclosure of "other interests". These are certain types of interest which do not meet the legislative test for a Disclosable Pecuniary Interest (DPI) but which may create for example, a conflict of interest

or a perception of bias if a decision maker failed to disclose such an interest and continued to be involved in the decision making process where it was inappropriate to do so.

22. This will result in the need for all members to review their declarations of interest form to ensure that all relevant interests are appropriately declared in light of the requirements of the revised Nottinghamshire Code. Colleagues in Democratic Services will write to members in due course asking them to update their forms and offering support and guidance as appropriate.

Other Options Considered

23. The Council could choose not to adopt the Model Code but this would go against the clear recommendations of the CoSPL and the considerable work of the LGA to develop a Model Code in light of extensive consultation with Councils across the country.
24. The views of the members working groups were sought about the best approach to the issues within the Model Code and the Council's existing Code in order to reach the proposals set out in the report. Given the recommendations of the CoSPL one of which was to try to achieve greater consistency between Council's Codes of Conduct, it is suggested that the recommendation of the working group be endorsed and recommended to Council for adoption.

Reason/s for Recommendation/s

25. To maintain a modern and updated Code of Conduct for Councillors and Co-opted Members in a way which is largely consistent with the LGA Model Code.

Statutory and Policy Implications

26. 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.

Financial Implications

27. There are no direct financial implications arising from the report other than potential costs associated with training requirements which can be contained within available budgets.

Consultation

28. Members working groups were consulted throughout the process to ensure that representative views of members across the political spectrum were taken into account in arriving at the end product. The LGA model Code was also subject to consultation during its development by the LGA.

Crime and Disorder Implications

29. The proposed draft Nottinghamshire Code reflects the legal requirements relating to the disclosure of DPIs imposed by statute, breach of which may constitute a criminal offence.

Data Protection and Information Governance

30. The proposed draft Nottinghamshire Code reflects the requirement for members to maintain the confidentiality of information entrusted to them in their role as a Councillors.

Public Sector Equality Duty implications

31. In coming to a decision, the Council should have regard to the Public Sector Equality Duty under the Equality Act 2010. In respect of this decision, it is not considered that there are any disproportionate impacts on any particular groups arising from the recommendations within this report.

Implications for Residents

32. The Code of Conduct for Councillors and Co-opted members provides a framework against which standards of conduct by members will be assessed. Residents may make complaints in the event they believe that the Code may have been broken and the Council has arrangements in place to assess those complaints under the Code using other tools to assist in that process where appropriate, including relevant guidance.

RECOMMENDATIONS

- 1) That Committee recommends to Council the adoption of the revised draft Nottinghamshire Code attached at Appendix 1
- 2) That appropriate mandatory training be arranged for members, to be completed as soon as practicable.
- 3) That members review their declarations of interests following notification by Democratic Services.
- 4) That authority be delegated to the Monitoring Officer to develop, amend and implement guidance and procedures as may be necessary to sit alongside the revised Nottinghamshire Code, in consultation with the Chairman of Governance Committee where appropriate.

MARJORIE TOWARD
MONITORING OFFICER AND SERVICE DIRECTOR CUSTOMER, GOVERNANCE AND EMPLOYEES

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Constitutional Comments (CEH 03.03.23)

33. Governance and Ethics Committee has the authority to consider the recommendations within the report.

Financial Comments (SES 07/03/2023)

34. There are no specific financial implications arising directly from this report. Any potential costs associated with training requirements can be contained within existing budgetary provision.

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.

- [Local Government Ethical Standards January 2019 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) (Published)
- [Guidance on Local Government Association Model Councillor Code of Conduct | Local Government Association](#) (Published)
- [Guidance on Member Model Code of Conduct Complaints Handling | Local Government Association](#) (Published)
- Report to Governance and Ethics Committee 25 November 2020 [Committee report template \(with guidance\) \(nottinghamshire.gov.uk\)](#) (Published)
- Report to Governance and Ethics Committee 6 January 2021 [Blank committee report template \(nottinghamshire.gov.uk\)](#) (Published)

Electoral Division(s) and Member(s) Affected

- All