

LICENCING, AUDIT & GENERAL
PURPOSES

MONITORING OFFICER
REPORT NO: LEG2101

25th JANUARY 2021

**UPDATE ON THE LOCAL GOVERNMENT ASSOCIATION MODEL CODE AND
DRAFT NEW CODE OF CONDUCT FOR MEMBERS**

SUMMARY:

The current Code of Conduct for Councillors requires to be updated and consulted upon in line with the best practice recommendations of the Committee on Standards in Public Life following their report into Ethical Standards in Local Government. A new Model Councillor Code of Conduct ('Model Code') has been produced by the Local Government Association. This is designed to protect Councillor's democratic role, encourage good conduct and safeguard the public's trust in local government. A draft new Code of Conduct for Councillors ('the draft new Code') mirroring this Model Code has been produced for consideration and for consultation in order to finalise a new Code for adoption by Council in due course.

RECOMMENDATION:

That the terms of the draft new Code be noted and agreed for consultation. Further, that the Committee agree a six-week period of consultation with Councillors, members of the public, community organisations and neighbouring authorities on the draft new Code. Following this, a report to be brought to the meeting of the Licensing Audit and General Purposes Committee on the 29th March 2021 with a final draft new Code, taking into account responses to the consultation for consideration and recommending the adoption of a new Code of Conduct by Council if appropriate.

1. INTRODUCTION

- 1.1 The Local Government Association (LGA) has published a new Model Code of Conduct after extensive consultation across the sector during the Summer of 2020. The Model Code was developed in order to support local government to continue to aspire to high standards of leadership and performance. The Committee on Standards in Public Life (CoSPL) reported on Ethical Standards in Local Government in 2019 and this report has informed the work of the LGA in producing a Model Code. The CoSPL report included 15 best practice recommendations in relation to the standards regime and ethical practice which they expect every local authority to implement. The current Rushmoor Member

of Code of Conduct requires to be updated to meet certain of these best practice recommendations in relation to prohibitions on bullying and harassment; a requirement for councillors to comply with any formal standards investigation and a prohibition re trivial or malicious allegations by Councillors. The publication of the Model Code presents the opportunity to both meet the best practice recommendations of the CoSPL and to modernise the Rushmoor Code, providing a very clear framework for all members in upholding the ethical values set out in the Model Code and clear guidance on meeting the Seven Principles of Public Life.

- 1.2 The stated purpose of the new Model Code is to assist councillors to make clear the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct that could lead to action being taken under the Code. It also seeks to protect councillors, the public, local authority officers and the reputation of local government. It sets out general principles of conduct expected of all councillors and specific obligations in relation to standards of conduct. The fundamental stated aim of the Code is to create and maintain public confidence in the role of councillor and local government.

2. BACKGROUND

- 2.1 The current Code of Conduct for Councillors applies to all Members and Co-opted Members of the Council when acting in their official capacity, or when giving the impression that they are acting as a representative of the Council. The current Code provides a list of general obligations for all Members of the Council to comply with including valuing colleagues and officers and treating everyone with respect and propriety. It focusses very much on declarations of interest and the impact of certain interests on the Member's ability to take part in the decision-making process. It does not positively state the commitment of elected Members as to the standards of behaviour that is expected of those elected to serve in public office nor give examples to guide. As such it does not meet the requirements of the CoSPL best practice recommendation in relation to providing clear guidance on preventing bullying and harassment.

3. THE COMMITTEE ON STANDARDS IN PUBLIC LIFE

- 3.1 The recommendation from the CoSPL is that all local authorities should include a prohibition on bullying and harassment in codes of conduct with a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by the definition so that it is very clear what harm this seeks to address. A further recommendation of the CoSPL is that councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.
- 3.2 The CoSPL highlighted in their report the danger of drawing too narrow a scope for the application of the Code of Conduct as this make it difficult to effectively deal with some instances of poor behaviour particularly in relation to social media use. The CoSPL recognised the question of public and private capacity raised significant issues about the responsibilities of elected representatives. It

said that whilst democratic representatives need to have their right to free speech and freedom of expression protected, the public interest demands that they meet certain responsibilities in that role.

- 3.3 The CoSPL recognises the widespread use of social media presents a particular challenge to deciding whether a code of conduct applies to instances of behaviour. In line with the guidance provided in Wales, the CoSPL consider that when a social media account identifies the individual as a councillor or an individual makes comments related to their role as a councillor, then the code of conduct applies.
- 3.4 The CoSPL also recognises that an individual's private life – that is, private behaviour in a personal capacity – should remain out of scope. This includes, for example, what is said in private conversations (where those conversations are not in an official capacity), but it says that those in high-profile representative roles, such as councillors, should consider that their behaviour in public is rightly under public scrutiny and should adhere to the Seven Principles of Public Life. This includes any comments or statements in print, and those made while speaking in public or on publicly accessible social media sites.
- 3.5 This does not, however, mean that councillors should be censured just because an individual dislikes or disagrees with what they say; standards in public life do not extend to adjudicating on matters of political debate. Controversial issues must be able to be raised in the public sphere, and councillors should have their right to form and hold opinions respected. Established rights to freedom of expression must be respected by councils when adjudicating on potential misconduct, considering the heightened protection granted to political expression.
- 3.6 The Committee on Standards in Public Life accordingly recommended that Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media.

4. THE CONSULTATION DRAFT COUNCILLOR CODE OF CONDUCT

- 4.1 The consultation draft new Code mirrors the Model Code of Conduct produced by the LGA and is appended to this report. Members will note the layout commences with a reference to the general principles of councillor conduct and the need to uphold the **Seven Principles of Conduct in Public Life**, also known as the Nolan Principles. These are appended to the draft new Code as they are in the current Code however in the new Code there is a greater emphasis on the link to the principals of the role of councillor set out in the Code. This focus on councillor conduct is helpful clarification for members given that the Nolan Principles are quite high level as they apply to all of those who serve the public or deliver public services.
- 4.2 The draft new Code applies to councillors acting in their capacity as a councillor including when a councillor misuses their position as a councillor and also where the actions of the councillor give the impression to a reasonable member

of the public with knowledge of all the facts that the councillor is acting as a councillor.

- 4.3 The draft new Code is written in the first person and runs clearly through when it will apply and the fact that it applies to **all** forms of communication and interaction with a list including social media communication. The draft new Code sets out the **minimum** standards of conduct required of councillors with guidance on the reasons for the obligations and how they should be followed. If a councillor's conduct falls short of these standards it is made clear that on receipt of any complaint, this may result in action being taken.
- 4.4 The obligations include treating others with respect; not bullying or harassing anyone and the promotion of equalities; not attempting to compromise the impartiality of anyone working for, or on behalf of, the Council. There is an obligation of confidentiality, and not using knowledge gained solely as a result of being a councillor for advancement of self or others; and not preventing anyone from getting information they are entitled to by law. A councillor must not bring their role of the council into disrepute nor must they use or attempt to use their position improperly to the advantage/disadvantage of themselves or others. A councillor must not misuse council resources. A councillor is required to undertake training on the code and cooperate with any investigation under the code. A councillor is obliged to register and disclose interests and disclose gifts and hospitality with a value of £50 within 28 days of receipt and register any significant gift or hospitality that they have been offered but have refused to accept.

5. REGISTRATION AND DISCLOSURE OF INTERESTS

- 5.1 The new draft Code maintains, as it must do, the legal requirement within 28 days of election or re-election to register Disclosable Pecuniary Interests in accordance with The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. There is also a requirement to register the details of other personal interests which are referred to as 'Other Registrable Interests'. A list and description of these types of Interest are contained within tables in the new draft Code.
- 5.2 The new draft Code clearly sets out the implications of the existence of such interests in relation to a councillor taking part in any discussion or decision making on a matter in which they have any interest.
- 5.3 The new draft Code simplifies the description and impact of personal interests and does not contain reference to the concept of 'prejudicial interests' which are somewhat difficult to navigate in the current Code. In so doing it removes the requirement to apply an additional subjective test.

6. SUMMARY AND RECOMMENDATIONS

- 6.1 The new draft Code simplifies and provides timely helpful clarification and guidance to members in navigating their role in a time of growing social media use and potential for intimidation and abuse. At the same time the new draft

Code seeks to reassure members of the public that those they elect will be accountable in meeting the behaviours set out in the Seven Principles of Public Life and taking decisions in a fair and transparent way.

- 6.2 It is recommended that the terms of the draft new Code be noted and agreed for consultation. Further, that the Committee agree a six-week period of consultation with Councillors, members of the public, community organisations and neighbouring authorities on the draft new Code. Following this, a report to be brought to the meeting of the Licensing Audit and General Purposes Committee on the 29th March 2021 with a final draft new Code, taking into account responses to the consultation for consideration and recommending the adoption of a new Code of Conduct by Council if appropriate.

BACKGROUND DOCUMENTS:

1. *Local Government Association Model Member Code of Conduct Consultation May 2020*
2. *LGA Model Councillor Code of Conduct December 2020*
3. *Report of the Parliamentary Committee on Standards in Public Life Report on Local Government Ethical Standards January 2019.*

CONTACT DETAIL:

Ian Harrison, Monitoring Officer
ian.harrison@rushmoor.gov.uk

Catriona Herbert, Corporate Manager - Legal and Deputy Monitoring Officer
catriona.herbert@rushmoor.gov.uk