

REPORT REFERENCE NO.	SC/20/1
MEETING	STANDARDS COMMITTEE
DATE OF MEETING	6 AUGUST 2020
SUBJECT OF REPORT	MODEL MEMBER CODE OF CONDUCT – CONSULTATION RESPONSE
LEAD OFFICER	Director of Governance & Digital Services
RECOMMENDATIONS	<i>That the Committee considers the contents of this report with a view to approving, subject to the incorporation of any amendments as may be indicated at the meeting, the draft consultation response attached at Appendix and authorising the Clerk to submit it to the Local Government Association on behalf of the Authority.</i>
EXECUTIVE SUMMARY	<p>On 8 June 2020 the Local Government Association launched a consultation on a Model Code of Conduct. The closing date for responses to the consultation is Monday 17 August 2020.</p> <p>This report:</p> <ul style="list-style-type: none"> • identifies the outcome of a gap analysis between the Authority’s existing Code and the proposed Model Code; • indicates where revisions to the Authority’s Code, informed by the gap analysis, might be appropriate to align it with the Model Code; and • proposes a response to the consultation for consideration by the Committee.
RESOURCE IMPLICATIONS	Nil.
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	Not applicable
APPENDICES	<p>A. Model Member Code of Conduct – Local Government Association Consultation Document</p> <p>B. Proposed response to the Model Code consultation.</p>
LIST OF BACKGROUND PAPERS	<p>A. The Localism Act 2011</p> <p>B. The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012</p> <p>C. Model Member Code of Conduct Consultation Document issued by the Local Government Association – available on the following link:</p> <p style="text-align: center;">https://www.local.gov.uk/local-government-association-model-member-code-conduct-consultation</p>

1. BACKGROUND AND INTRODUCTION

- 1.1. The Localism Act 2011 (“the Act”) and Regulations¹ made thereunder removed the previous, national standards regime in favour of a more localised approach. All relevant authorities (including fire and rescue authorities) were required to develop their own Codes of Members Conduct which, when taken as a whole, were consistent with the Nolan principles of public life. There was a requirement for certain interests (pecuniary interests) to be registered, for which failure to do so is a criminal offence. By way of enforcement, authorities were required to have in place procedures (to include an “independent person”) to deal with breaches of the Code of Conduct, other than where these breaches related to a pecuniary interest (which, by virtue of the Act, could only be dealt with by the Director of Public Prosecutions).
- 1.2. Other than the above, there was no prescription on what areas should be covered in the Code of Conduct. Additionally, sanctions that could be imposed for breaches relating to non-pecuniary issues were considerably curtailed from those available for the former Standards Board for England.
- 1.3. At the outset, the Authority adopted a Code of Conduct based largely on the former Model Code produced by the Standards Board for England, the initial model code produced by the LGA being considered not sufficiently expansive or detailed. The Authority Code has been subject to revision over time, to reflect amongst other things actual experience. The most recent revision was in April 2019 to reflect, as far as was practicable, those recommendations made by Committee on Standards in Public Life (“CSPL”) following its review of the local government ethical regime introduced by the Act. It was acknowledged at that time, however, that certain recommendations made by the Committee would require legislative change. To date, this has not happened.
- 1.4. The Committee also recommended that the Local Government Association (LGA) should review its model Member Code of Conduct. At the end of 2019 the LGA held an event on Civility in Public Life with a range of stakeholders. A further three workshops were held by the LGA at the beginning of 2020. LGA consultants have also examined examples of good practice, both in local government and other professions. The result of this initial work has been the production of a Model Code of Conduct (“the Model Code”), a consultation on which commenced on 8 June 2020 with a closing date for responses of 17 August 2020. A copy of the consultation document, incorporating the proposed Model Code, can be found by following this link:

<https://www.local.gov.uk/local-government-association-model-member-code-conduct-consultation>
- 1.5. Responses to the consultation can be submitted either by an online consultation questionnaire and/or by submitting a narrative response to ModelCode@local.gov.uk

2. GAP ANALYSIS BETWEEN MODEL CODE AND CURRENT AUTHORITY CODE

- 2.1. As a precursor to and to assist in formulating a draft response to the consultation, a gap analysis has been undertaken of the current Authority Code compared to the Model Code. By and large the two Codes contain the same content, for example:
 1. application of the Code;
 2. reference to and identification of the Principles of Public Life;
 3. identification of specific obligations on Members in complying with the Code;

¹ The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012

4. identification both of pecuniary interests (as stipulated by Regulations) and other registerable interests (referred to in the Authority Code as “personal interests”), for example membership of any body exercising functions of a public nature or whose principal purpose includes the influence of public opinion or policy (including any political party or trades union);
5. identification of what interests should be declared at meetings and what course of action should be taken (e.g. withdrawal from the meeting) having declared an interest.

2.2. Nonetheless, depending on the outcome of the consultation, the Authority’s Code could be amended to secure greater alignment with any Model Code eventually produced by the LGA. Such amendments might include:

1. re-ordering of the content of and headings used in the Code to align with the order of content and headings as per the Model Code;
2. inclusion of a new section on Model Conduct and Expectations (drawn from the Model Code);
3. expansion of the descriptions of the General Principles of Public Life to reflect the content/descriptions in the Model Code;
4. expansion of the descriptions of the Specific Obligations to reflect the descriptions on the Model Code and specifically to:
 - a. include a new Specific Obligation on the registration of gifts and hospitality; and
 - b. amend the definitions of “bullying” and “harassment” to match those in the Model Code;
5. inclusion of membership of a body directed to charitable purposes as a registerable “personal” interest.

2.3. There are some areas where it is considered the existing Authority Code has either greater clarity or is more consistent with the General Principles of Public Life in seeking to promote good standards of conduct. These are:

1. the Model Code introduces a concept of “civility” rather than “respect, which is currently in the Authority’s Code. It is suggested that this Authority may wish to retain the concept of “respect” for the following reasons. Civility can be defined as formal politeness and courtesy in behaviour of speech. Respect, however, implies a more positive obligation – to have due regard to the feelings, wishes and rights of others and to behave accordingly. “Respect” encompasses “civility” but is considered more appropriate in light of the overall context of the General Principles of Public Life and the purpose of the Model Code, which should be about those in public office demonstrating, through their conduct and behaviours, firmly held beliefs;
2. the specific obligation not to disclose confidential information (paragraph 6.3(7) in the Authority Code; page 4, point 5 in the model Code). It is considered that the description in the current Authority code has more clarity in that it also provides for those instances where it might be permissible to disclose information that would otherwise be confidential (i.e. legally required to do so; and “whistleblowing”);

3. this Authority's Code currently places the following additional specific obligations on Members:
 - (a). when reaching decisions on any matters, to do so on the merits of the case, acting in the public interest, giving reasons (where required) for decisions and having reasonable regard to any relevant advice provided by an officer of the Authority (e.g. the Chief Fire Officer, Chief Financial Officer and Monitoring Officer).
 - (b). as recommended as best practice by CSPL:
 - (i). a requirement to comply and co-operate fully and openly with any formal investigation in which a Member is either the Subject Member or a witness; and
 - (ii). a requirement not to make trivial or malicious allegations against a fellow Member (or Members) of the Authority.

In relation to 3(a) above, the requirements to reach decisions on merit, act in the public interest and give reasons for decision are consistent with the General Principles of Public Life (objectivity, selflessness and openness). As such, it is felt that these should be reflected as specific obligations. Similarly, the requirement to have due regard to relevant advice provided by an officer of the Authority is consistent with the General Principles of Public Life of objectivity, openness, respect for others and duty to uphold the law.

In relation to 3(b)(i) above, it is suggested that this Committee may wish to recommend to the Authority that this is expanded to include a requirement to comply and co-operate fully with any sanction that might have been imposed for a proven breach of the Code;

4. the requirement to register as a "personal" interest any non-pecuniary directorship or membership (within the meanings of the Companies Act 2006) or any non-pecuniary interest in a contract between the Authority and a company in which the Member or relevant person as a beneficial interest. As indicated, it may be that such interests/connections are not necessarily pecuniary in nature but nonetheless it would maintain confidence in the Authority and promote transparency if such interests, which might otherwise be perceived as conflicting, were declared. Additionally, the requirement to declare non-pecuniary directorship/membership of companies or trusts was recommended by CSPL following its review.

- 2.4. Any Model Code that may ultimately be published by the LGA will not be mandatory. Rather, it will set out minimum standards which the Authority is free to expand on should it so wish. It is proposed, therefore, that the above are retained in the Authority's Code and that, in responding to the consultation, this Committee may wish to recommend their incorporation into the Model Code.

3. OTHER CONSIDERATIONS

- 3.1 The Consultation Document contains an example LGA Internal Resolution Procedure. This Authority already has in place full and robust procedures for dealing with complaints alleging a breach of the Code of Conduct, as required by the Localism Act. These were amended in April of last year to reflect best practice recommendations (for example, a clear definition and application of the public interest test) by CSPL. While it is a statutory requirement to have these procedures in place, they need not form part of the Code of Conduct itself, provided that they are readily available to the public. For this Authority, these procedures, together with guidance on making a complaint, are published on the website.
- 3.2 The Consultation Document does contain some views on sanctions to apply in the event of a proven Code breach. Many of these are already in place for this Authority (with the exception of a proposed two month suspension). Legislative change would, however, be necessary to enable any more meaningful sanctions to be imposed. This was recognised by CSPL which recommended that the government amend the legislation to allow for a sanction of suspension for six months, without allowances, for the most serious Code breaches. It is suggested that this Authority may wish to ask the Local Government Association to lobby the government to implement the CSPL recommendations. Similarly, it is suggested that this Authority may wish to ask the Local Government Association to lobby the government to implement the CSPL recommendation of a right of appeal for Councillors to the Local Government Ombudsman on sanctions that may have been imposed following a proven breach of the Code.
- 3.3 Finally, CSPL recognised that there was some potential for friction between Members and statutory officers (in particular, the Monitoring Officer) stemming from the statutory duty in the Localism Act 2011 to promote and maintain high standards of conduct by Members. In recognition of this, CSPL recommended an amendment to the relevant Regulations to extend the disciplinary protections for statutory officers to all types of disciplinary action, not just dismissal. It is suggested that, in responding to the consultation, this Authority may also wish to advocate that the Local Government Association lobbies the government for this amendment.

4. DRAFT RESPONSE TO CONSULTATION

- 4.1. A draft response to the consultation (using the online questionnaire format) is attached at Appendix B to this report. The draft response incorporates those points identified in Sections 2 and 3 above of this report. The Committee is invited to consider the draft response with a view to authorising the Clerk to submit it (subject to incorporation of any amendments as may be indicated at the meeting) on behalf of the Authority.

MIKE PEARSON
Director of Governance & Digital Services