



AUDIT & GOVERNANCE COMMITTEE

Monday 29 June 2020

LOCAL GOVERNMENT ASSOCIATION (LGA) NATIONAL CODE OF CONDUCT

EXECUTIVE SUMMARY

1. As part of the Localism Agenda, the Government made changes to the standards regime for local government, when they introduced the Localism Act in 2011 (the Act). Under the Act, this Council has a duty to promote and maintain high standards of conduct. The Act also said that each council had to have a Code of Conduct, but it was at each Council's discretion as to the contents. In Suffolk, all councils adopted the Suffolk Local Code of Conduct (the Code).
2. The Committee on Standards in Public Life (CSPL) reviewed ethical standards in local government in 2018/19. The CSPL produced a report on their review, in January 2019, which made 26 recommendations to Government. The first recommendation was that the LGA produce a national, Model Code of Conduct (the Model Code).
3. The LGA have now published a Model Code and are consulting on it, from 8 June 2020 to 17 August 2020. They have produced a questionnaire for Members and Officers to respond to, about the Model Code.
4. This Committee has a remit in its Terms of Reference to deal with standards matters. Also, the Code is part of the Council's Constitution. Any changes to the Code would need to be considered by this Committee and recommended to Council for adoption.
5. The purpose of this report is to consider the Model Code and invite the Committee to comment on it.

Is the report Open or Exempt?	Open
Wards Affected:	All
Cabinet Member:	Councillor Steve Gallant, Leader of the Council

Supporting Officer:

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1 INTRODUCTION

- 1.1 The LGA has provided a Model Member Code of Conduct (Model Code), for consultation. It can be found at this link:

<http://www.local.gov.uk/sites/default/files/documents/LGA%20Model%20Member%20Code%20of%20Conduct.pdf>

The Model Code has been produced by the LGA as part of its support for high standards of behaviour and performance in local government.

- 1.2 Under s27 of the Localism Act 2011 (the Act), the Council has a duty to promote and maintain high standards of behaviour by Members and co-opted Members of the authority. Each local authority must publish a code of conduct but has discretion as to the contents of their code. It must cover the registration of pecuniary interests, the role of an 'independent person', and sanctions to be imposed on any councillors who breach the Code. Under the Act, these sanctions cannot include suspension or disqualification from office, for example, but may include censuring the councillor found to be in breach, or requesting that they undertake training, mediation, or issue an apology for their behaviour.

- 1.3 Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence under the Act.

- 1.4 In 2012, all Councils adopted the Suffolk Local Code of Conduct (the Code), so that all tiers of local government were operating under the same code. The Code was similar to the national code of conduct that had existed, prior to 2012. A link to the Code is here;

<https://www.eastsuffolk.gov.uk/assets/Your-Council/Councillors/SuffolkLocalCodeofConduct.pdf>

- 1.5 In 2018/19, the Committee on Standards in Public Life (CSPL) reviewed ethical standards in local government. In January 2019, they published a report of their review, and made 26 recommendations to Government about how the regime might be changed. The recommendations were reported to the Audit and Governance Committee on 7 February 2019 (Rep1900 and Rep1919). The first of the CSPL's recommendations was for there to be a return to a national, model code. The CSPL report can be read via the link below.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/777315/6.4896_CO_CSPL_Command_Paper_on_Local_Government_Standards_v4_WEB.PDF

To date, due to Brexit and now, the COVID-19 pandemic, the Government has not responded to the CSPL's report. Meanwhile, the LGA was committed to producing the Model Code, as recommended by the CSPL's report.

- 1.6 The LGA held an event on Civility in Public Life with a range of stakeholders at the end of last year and three consultation workshops at the beginning of this year. They engaged consultants to examine examples of good practice, both in local government and other professions, and to draft the Model Code.

- 1.7 The Model Code is the result of this work. The LGA intend to create additional guidance, working examples and explanatory text, to go with it. Note that some of the changes proposed in the Model Code will require a change to the Act. For example, it is not possible

under the Act to impose sanctions on those found to have breached their code of conduct. For sanctions to be imposed, such as suspension from office for those found in breach, the Act will need to be changed.

- 1.8 A summary of what is in the Model Code is set out in the Appendix A to this report. The LGA consultation on the Model Code runs for 10 weeks from Monday 8 June until Monday 17 August. There is an online consultation questionnaire for both Members and Officers to complete. It consists of 17 questions about the Model Code. The LGA are also happy to receive written responses from councils or stakeholder groups via email at ModelCode@local.gov.uk. This email address can also be used if there are any questions regarding the consultation and/Model Code. Details about the consultation can be found here: <http://www.local.gov.uk/code-conduct-consultation-2020>
- 1.9 The LGA will also be holding a number of webinars on the draft code, over the summer. The details of these webinars will be on the LGA's events page on their website. The feedback from the consultation will help the LGA develop a final draft, which will be reviewed by the LGA's Executive Advisory Board before being presented to the next LGA General Assembly, which they hope will be held in the Autumn of 2020.
- 1.10 Given its remit to look at standards issues, the Committee is asked to comment on the Model Code. It is intended that Cabinet be asked to comment on the Model Code, and, therefore, the views of this Committee can be included in a report to Cabinet on 7 July 2020. Members can also make individual responses, directly to the LGA via the questionnaire-see the links above.

2 HOW THE CODE DIFFERS FROM THE MODEL CODE

- 2.1 The Act requires the Council to have a code, but the contents are a matter for the Council to decide upon. The Model Code marks a return to a national code which all Councils would be bound by, if the Act were changed to say that Councils no longer had discretion as to what was in their Code, and had to adopt the Model Code. A national code gives consistency and certainty, in terms of standards of behaviour for all councillors.
- 2.2 The Code applies when councillors or co-opted Members carry out Council business. It does not apply to actions or behaviour carried out privately, when a person is acting in an individual capacity. The Model Code would apply when councillors are acting as councillors, identifying as councillors or giving the impression of acting as a councillor. It also applies to all forms of Members' communications including social media when acting as a councillor or there are implications for the Council's reputation. So, the application of the Model Code is wider than the Code. Also, the Model Code provides clarity and certainty in terms of social media. With an increased use of social media, it is often uncertain, under the Code, whether or not a councillor is posting as a councillor, or as a private individual. Given new ways of working, such as having remote meetings, and the increased use of electronic communications, particularly during the COVID-19 pandemic, the LGA is interested to know if the Model Code's wider ambit is helpful.
- 2.3 The Code requires that councillors are not disrespectful to others. The Model Code focusses on the idea of showing "civility", or politeness and courtesy. What amounts to civility or disrespect can be dependent on the facts and requires a subjective judgement to decide. It is suggested, however, that criticising ideas and opinions is acceptable, but making personal or abusive comment would be showing a lack of civility.
- 2.4 The Code and the Model Code are very similar, in relation to the obligations in the Model Code numbered 3-10 in paragraph 6 of Appendix A to this report. However, the Code says

that councillors have to declare gifts or hospitality which they receive (that is, accept) which are worth £25 or over in value. The Model Code says that councillors should not accept “significant” gifts or hospitality which they are offered from those looking to do business with the Council, or those submitting applications for licenses, consents or permissions. The Model Code is clearer in this respect. However, the threshold for Councillors having to declare the receipt of gifts and hospitality remains at £25 in the Model Code, as in the Code.

- 2.5 Also, in terms of the declaration of interests, currently, under the Act, Members have to declare their own disclosable pecuniary interests (DPIs) and those of their spouse or partner. The requirement to declare DPIs is set out in the Act. The LGA have proposed that Members would need to declare their DPIs and those of “family members and associates”. A change to the legislation would be required to allow for this wider application. However, it is the case that if Members are considering planning or licensing applications, for example, submitted by family members other than their spouse or partner, strictly, they do not have a DPI in that item of business. Yet, clearly, they have a conflict of interest and would be likely to be advised not to take part in that item of business. The widening of the definition of DPIs would mark a return to the wording which was found in the pre-2012, national code and is clearer and more certain in application for the public, Members, and Officers who might have to give advice.

3 HOW DOES THIS RELATE TO EAST SUFFOLK STRATEGIC PLAN?

- 3.1 Good governance underpins all of the five themes in the Council’s Strategic Plan. How Members conduct themselves is key to how the Council conducts its business, and to how Members, Officers and the public inter-relate. High standards of conduct foster good decision making, and good public relations, which in turn, enables our communities to have confidence in the Council. It also ensures that the systems, processes and practices of the Council are sound, and operated in a manner which is consistent with the expectations and obligations in the Code and the Model Code.

4 FINANCIAL AND GOVERNANCE IMPLICATIONS

- 4.1 The Model Code is a draft document that is being consulted on at the moment. There are no direct costs associated with this consultation exercise for this Council. However, the Council does have a duty to promote and maintain high standards of behaviour and conduct. It would seem appropriate and expected, therefore, that the Council might wish to comment on a national consultation, and to have its say on an important element in the Council’s governance framework.

5 OTHER KEY ISSUES

- 5.1 None

6 CONSULTATION

- 6.1 None, as this report is about a consultation being undertaken by a third party, that is the LGA.

7 OTHER OPTIONS CONSIDERED

- 7.1 Not to comment on the Model Code. However, this option would deny the Council the opportunity to comment on national proposals and to influence the outcome of a major aspect of the Council’s governance framework.

8 REASON FOR RECOMMENDATION

- 8.1 To comment on a national consultation about a significant proposal for change to the Council's governance framework.

RECOMMENDATIONS

That having considered this report, the Code, the Model Code, and the differences between the two, the Committee makes comments on the Model Code which can be considered by Cabinet and submitted to the LGA as a response to their consultation.

APPENDICES

Appendix A	What is in the Model Code?
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BACKGROUND PAPERS - NONE

WHAT IS IN THE MODEL CODE?

1. The purpose of the Model Code is to assist councillors in setting the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken. It is also to protect councillors, the public, fellow councillors, council officers and the reputation of local government. It sets out the conduct expected of all members and places 12 obligations on Members which are actionable if a councillor breaches them. The overarching aim is to create and maintain public confidence in the role of Members and local government.
2. The Model Code will apply when councillors are acting, or claiming, or giving the impression, that they are acting in public or in their capacity as a member or representative of their council, although councillors are expected to uphold high standards of conduct and show leadership at all times. The Model Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and social media, including where councillors could be deemed to be representing their council or if there are potential implications for the council's reputation.
3. The seven principles of public life apply to everyone in public office at all levels – ministers, civil servants, members, council officers – all who serve the public or deliver public services should uphold the seven principles of public life. The Model Code has been developed in line with these seven principles, which are set out in appendix A to it.
4. The expectations set out in the Model Code state that members will conduct themselves in accordance with the public trust placed in them, and on all occasions will:
 - act with integrity and honesty
 - act lawfully
 - treat all persons with civility; and
 - lead by example and act in a way that secures public confidence

In undertaking their role, they will:

 - impartially exercise their responsibilities in the interests of the local community
 - not improperly seek to confer an advantage, or disadvantage, on any person
 - avoid conflicts of interest
 - exercise reasonable care and diligence; and
 - ensure that public resources are used prudently and in the public interest
5. There are 12 specific obligations of general conduct which set out the minimum requirements of member conduct. Guidance is included to help explain the reasons for the obligations and how they should be followed. These obligations must be observed in all situations where councillors act or claim or give the impression that they are acting as a councillor or in public, including representing their council on official business and when using social media.

6. The 12 specific obligations are listed below.

- (1) Treating other councillors and members of the public with civility.
- (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. Civility means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor, it is acceptable to express one's views, to challenge, criticise and disagree with others' ideas, opinions and policies, in a civil manner. But subjecting individuals, groups of people or organisations to unreasonable or excessive personal attack is not acceptable or civil.

In contact with the public, councillors should treat them courteously. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return, councillors have a right to expect courtesy from the public. If members of the public are being abusive, threatening or intimidatory, councillors are entitled to close down any conversation in person or online, refer them to the council, any social media provider or if necessary, the police.

- (3) Not to bully or harass any person. Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.

The Equality Act 2010 defines harassment as 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual'. The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

- (4) Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council. Officers work for the council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. Although it is acceptable to question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, councillors must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.
- (5) Not disclosing information given to a councillor in confidence or disclosing information acquired by a councillor which the councillor believes is of a confidential nature, unless the councillor has received the consent of a person authorised to give it or the councillor is required by law to do so.
- (6) Not preventing anyone getting information that they are entitled to by law. Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public except in certain circumstances. Councillors should work on this basis but there will be times when it is required by law that discussions, documents and other information relating to or held by the council are treated in a

confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

- (7) Councillors must not bring their role or council into disrepute. Behaviour that is considered dishonest and/or deceitful can bring the council into disrepute. As a member, there is an expectation that they are entrusted to make decisions on behalf of their community and their actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. Councillors should be aware that their actions might have an adverse impact on other councillors and/or their council.
- (8) Not using, or attempting to use, your position improperly to the advantage or disadvantage yourself or anyone else. The position as a member of the council provides Members with certain opportunities, responsibilities and privileges. However, councillors should not take advantage of these opportunities to further private interests.
- (9) Not misusing council resources. Councillors may be provided with resources and facilities by the council to assist in carrying out their duties as a councillor. Examples include office support, stationery and equipment such as phones, and computers and transport. These are given to help carry out the role as a councillor more effectively and not to benefit councillors personally.
- (10) Councillors must register and declare interests. They need to register their interests so that the public, council employees and fellow members know which of their interests might give rise to a conflict of interest. The register is a document that can be consulted when (or before) an issue arises, and so allows others to know what interests councillors have, and whether they might give rise to a possible conflict of interest. The register also protects councillors who are responsible for deciding whether or not they should declare an interest in a meeting, but it can be helpful for them to know early on if others think that a potential conflict might arise.

It is also important that the public know about any interest that might have to be declared by members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained. More details about registering and declaring interests is set out in appendix B to the Model Code.

- (11) There are provisions about 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.
- (12) Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt. Members should exercise caution in accepting any gifts or hospitality which are (or which they reasonably believe to be) offered to them because they are a member. However, councillors do not need to register gifts and hospitality which are not related to their role as a member, such as Christmas gifts from their friends and family, or gifts which they do not accept. However, councillors you may wish to notify their monitoring officer of any significant gifts which they are offered but refuse and which they think may have been offered to influence them.