



STANDARDS COMMITTEE

Report title: Consultation on The Local Government Association's Draft Member Model Code of Conduct

Date: 5 August 2020

Key decision: No.

Class: Part 1

Ward(s) affected: ALL

Contributors: Report Author: Deputy Monitoring Officer for and on behalf of the Monitoring Officer - Director of Law, Governance, HR and Elections.

Outline and recommendations

That the Council's Standards Committee consider the proposals set out in the draft Model Member Code of Conduct produced by the Local Government Association ("LGA") consultation paper and agrees whether or not to provide a response to the LGA. In the event it decides to provide a response to this consultation then it is to agree the substance of the response to be made to the LGA, and asks the Monitoring Officer to send a written response to the LGA in accordance with the Committee's decision before the 17th August 2020.

Timeline of engagement and decision-making

In accordance with the provisions of the Localism Act 2011, Local Authorities are required to adopt a code of conduct which sets out rules governing the behaviour of their Members. The Code of Conduct seeks to ensure that Members observe the highest standards of conduct in their civic role.

The Council's current Member Code of Conduct was most recently formally approved together with the Constitution on 27 November 2019 and published December 2019. (A copy of the current Member Code of Conduct is attached to this report, as **Appendix 1.**)

In January 2019, the Committee on Standards in Public Life, ("CSPL") published a report, 'Review of Local Government Ethical Standards'. (The 2019 report is attached, as **Appendix 2.**)

The CSPL made a number of recommendations. First recommendation was for the Local Government Association ("LGA") to create an updated version of their previous Model Code. The LGA has provided a draft Model Member Code of Conduct for consultation as part of its work on supporting the sector to continue to aspire to high standards of leadership and performance. (The LGA proposed and draft Model Member Code of Conduct is attached, as **Appendix 3.**) The Consultation began 8 June 2020 and runs until Monday 17 August 2020.

Summary

- 1.1. The purpose of this report accords with the Council's Core Priority of being an 'Open Lewisham'. It fully accords with our Core Value; namely, to set a 'benchmark for our behaviour across the organisation.'
- 1.2. Members are being consulted on the draft Local Government Association's proposed Member Model Code of Conduct.

Recommendations

- 1.3 That the Council's Standards Committee:-
 - consider the proposals set out in the draft Model Member Code of Conduct produced by the LGA and to note its contents;
 - agrees whether or not to respond to the LGA;
 - And, if it does so agree to respond, then to ask the Monitoring Officer to send a written response with the Committee's decision to the LGA before the 17th August 2020.

Policy Context

- 1.4 The Council is committed to the highest standards of corporate governance and views the ethical framework as integral to that process.

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Background

- 1.5. 30th January 2019, the Committee on Standards in Public Life, (“CSPL”) published a report, ‘Review of Local Government Ethical Standards’. That followed a consultation exercise that happened between January and May 2018. It is their first significant review of local government ethical standards since the current ‘Standards’ regime came out under the Localism Act 2011.
- 1.6 As part of their review, they considered whether there was a need for a centralised body to govern and adjudicate on standards. They concluded that local authorities should retain ultimate responsibility for implementing and applying the ‘Seven Principles of Public Life in local government’. (The Seven Principles from the Nolan Report 1995: selflessness, integrity, objectivity, accountability, openness, honesty, leadership.)
- 1.7 The CSPL made a number of recommendations. Its first recommendation was for the Local Government Association (“LGA”) to create an updated version of their previous Model Code of Conduct. The LGA has provided a draft Model Member Code of Conduct for consultation as part of its work on supporting the sector to continue to aspire to high standards of leadership and performance. The Consultation began 8 June 2020 and runs until Monday 17 August 2020.
- 1.8 The consultation draft Model Member Code of Conduct flows specifically from an event held late in 2019 by the LGA, entitled ‘Civility in Public Life’. That event was held with a number of stakeholders. They looked at examples of good practice, both in local government and other professions.
- 1.9 The LGA’s objectives when reviewing the model code of conduct has been to:
 - Articulate what local government believes are good standards for all in public office;
 - Show leadership in good standards of conduct for those in public office, both elected and as employees;
 - Achieve consensus between the stakeholders affected by local government conduct;
 - Support its member councils and partners in achieving good standards of conduct;
 - Produce a code that is fit for purpose, useful and held in high regard;
 - Enhance the reputation of local government and local politicians;
 - Support the good running of councils;
 - Support all democratically elected local representatives to deliver their best on behalf of their local communities;
 - Build on the good practice that already exists within member councils

The main issues only arising from the Consultation are set out here below. Members are meanwhile invited to read and consider the proposals in their entirety as set out within the LGA draft Model Code of Conduct for the purposes of this report and for the 2020 consultation. Of assistance for this purpose, Members may particularly find it useful to refer here to the Appendices which are attached to this report.

1.10 1. From the CSPL:

‘Presumption of acting in an official capacity’

1. Councillors should be presumed to be acting in an official capacity in their public

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conduct, including statements on publicly- accessible social media. (This would require amendment to the Localism Act 2011, s. 27(2) to permit local authorities to presume so, when deciding upon code of conduct breaches.)

From the LGA:

The LGA have included these provisions in square brackets within its draft Model Code and is supportive of these recommendations going forward.

2. From the CSPL:

'Disclosable Pecuniary Interests'

Unpaid directorships, trusteeships, management roles in a charity or a body of a public nature, and membership of any organisations that seek to influence opinion or public policy – should be disclosable by Councillors. This would require amendment to the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012.

From the LGA:

They have similarly provided square brackets to this part of their draft Model Code, relating to disclosing unpaid directorships and so on. Within their Table 2, they refer to 'other registrable interests' for organisations of public functions or charitable nature, but significantly they are only in relation to appointments made by the Authority.

3. From the CSPL:

'Gifts and Hospitality'

Local Authorities should record gifts / hospitality over a value of £50 or totalling £100 over a year from a single source.

From the LGA:

They suggest the value should remain at £25 and to be reported to the Monitoring Officer within 28 days of receipt.

4. From the CSPL

'Sanctions'

Local Authorities should be given the power to suspend Councillors, without allowances for up to 6 months.

Central Government should clarify if Councils may lawfully bar Councillors from Council premises or withdraw facilities as sanctions

The criminal offences in the Localism Act 2011 relating to disclosable pecuniary interests should be abolished.

Councillors should be given the right to appeal to the Local Government and Social Care Ombudsman if their local authority imposes a period of suspension for breaching the code of conduct.

From the LGA:

Sanctions and suspension have not been really addressed within the draft Model. Presumably this may be because it would require legislative changes.

The draft Model Code does provide a ban to Council resources for up to 2 months as

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suspension is not provided for. There is also no reference to an opportunity to appeal to the Local Government and Social Care Ombudsman.

Conclusion

1.11 Members are invited to consider the draft LGA Model Code in full and to respond in accordance with the recommendations set out within paragraph 1.3 above.

Financial implications

1.12 There are no specific or immediate financial implications arising from this report

Legal implications

1.13 The terms of reference (from the Constitution) for the Standards Committee expressly states that it is “to deal with all matters relating to the ethical framework affecting members of the Council...” . Further it significantly also notes that it is this Committee that is tasked by the Council to advise “...the Council on the introduction and operation of the Member Code of Conduct, making recommendations for change as the Committee sees fit.”

1.14 Section 27(1) of the Localism Act 2011 (“2011 Act”) provides that the Council must promote and maintain high standards of conduct by Members and Co-opted members of the Authority. Sections 27 and 28 of the 2011 Act requires the Council to adopt a Code of Conduct which is consistent with the Nolan principles (see para 1.6 above) of good governance and to appoint at least one Independent person whose views must be sought and taken into account before the Council makes a decision about an alleged breach of the code that has been investigated.

1.15 The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality duty or the duty). It covers the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

1.16 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

1.17 It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed above.

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1.18 The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances.

1.19 The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

1.20 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

1.21 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

1.22 <https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

Equalities implications

1.23 There are no specific additional equalities implications arising from this report.

Climate change and environmental implications

1.24 There are no specific Climate change and environmental implications arising from

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this report.

Crime and disorder implications

1.25 There are no specific crime and disorder implications arising from this report.

Health and Wellbeing implications

1.26 There are no specific health and wellbeing implications arising from this report.

Appendices

Appendix 1 – Current Member Code of Conduct

Appendix 2 – The Committee on Standards in Public Life, (“CSPL”) 2019 ‘Review of Local Government Ethical Standards’. The link to the Review is here:-

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

Appendix 3 – Local Government Association proposed draft Member Code of Conduct.

Glossary

Term	Definition
LGA	Local Government Association
CSPL	Committee on Standards in Public Life

Report author and contact

1.20 Petra Der Man (Deputy Monitoring Officer) petra.derman@lewisham.gov.uk

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