

10 March 2022		ITEM: 10
Standards and Audit Committee		
Ethical Standards		
Wards and communities affected: N/A	Key Decision: N/A	
Report of: Gina Clarke, Corporate Governance Lawyer & Deputy Monitoring Officer		
Accountable Assistant Director: Mark Bowen, Interim Head of Legal		
Accountable Director: Sean Clark, Corporate Director of Resources and Place Delivery		
This report is public. Appendix 3 is exempt		
<p><i>Appendix 3 of the report, has been classified as being either confidential or exempt by reference to Schedule 12A of the Local Government Act 1972, information relating to an individual and in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is hereby marked as being not for publication. The press and public are likely to be excluded from the meeting during consideration of any confidential or exempt items of business to which the report relates.</i></p>		

Executive Summary

Following a significant number of reports and complaints concerning member conduct, details of which are set in the exempt part of this report, independent external legal advice was sought as to what action the Council could consider to further its duty to promote high standards of behaviour for elected members. In doing so the Council's current code of conduct has been considered together with certain documentation detailing some examples of Member behaviour.

It is important that the Council is equipped with the right tools within the limitations of the Localism Act 2011 to ensure that standards of Members are upheld. The content of this report incorporates the legal advice received and the associated recommendations. The committee is asked to consider the Local Government Association's (LGA) model Councillor Code of Conduct, the process for handling Member Code of Conduct complaints, the Protocol on Member/Officer relations (with potential to introduce a Member/Member Protocol) and to develop a social media policy. Any changes are recommended for adoption by Full Council.

1. Recommendation(s)

- 1.1 The committee consider the LGA model Councillor Code of Conduct as set out in Appendix 1 and consider recommending to Council that this is adopted.**
- 1.2 The committee consider asking the Monitoring Officer to develop a social media policy which should be adopted at the same time as the model code of conduct.**
- 1.3 The Monitoring Officer to review the current process for handling member code of conduct complaints and the protocol for Member/officer relations and advise on any changes which should be made.**
- 1.4 Note the contents and actions to be taken as set in the exempt Appendix 3.**

2. Introduction and Background

Model Councillor Code of Conduct:

- 2.1 Following the Localism Act 2011, the code of conduct rules for councillors and the standards process for dealing with allegations of breaches of the code of conduct changed significantly. Whereas previously there was a national code of conduct for councillors drawn up by Standards for England (formerly the Standards Board) and enforced both by the Standards for England and (later on) by each local authority. This included imposing sanctions on councillors, which could include suspending them from office.
- 2.2 Standards for England and the national code of conduct were abolished by the 2011 Act and it is now up to each local authority to adopt their own code of conduct to promote high standards of conduct which must be consistent with the Nolan principles of public life: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. In addition, each local authority was required to decide on the process for handling code of conduct complaints and the sanctions to enforce their code of conduct. The ability of councils to make sanctions against members was significantly watered down; to a level where many question their effectiveness as the sanction to suspend members from office was abolished.
- 2.3 The sanctions which are available to councils at the moment are broadly to censure a Member at council; to remove certain privileges from Members; to ask Members to apologise; and to ask Members to undertake further training. The most serious sanction is for Members to be censured for their behaviour by the Council.
- 2.4 By virtue of section 27 of the Localism Act 2011 the Council is required to promote and maintain high standards of conduct by Members and co-opted

members. Within the limitations imposed by the Localism Act, the Council can and try to do what can be done to prevent behaviour, which could be:

- considered as bullying or harassment to officers, other Members and sometimes to members of the public;
- to take action to prevent Members from revealing confidential information which they have received in their role as a member; and
- generally not to participate in any behaviour which would be felt to be inadvisable or inappropriate.

- 2.5 The recommendations of the Committee for Standards in Public Life (CSPL) were published in 2019 and its report made clear that the current system, in its view, was not operating effectively and that there was a significant need to improve the standards regime and the sanctions. The CSPL's recommendations included that local authorities should be given the power to suspend councillors without allowances for up to six months for breaches of the code of conduct. Given that the Localism Act removed many of the possible sanctions against Members these can only be reintroduced through primary legislation.
- 2.6 The Government has recently announced that it is actively considering the recommendations of the CSPL and will respond shortly.
- 2.7 The Council's current code of conduct was adopted in 2013 and has the potential to be refreshed to cover issues such as the use of social media and the need to observe confidentiality in electronic communications.
- 2.8 One of the recommendations of the CSPL report was that the Local Government Association ('LGA') should create an updated code of conduct in consultation with representative bodies of councillors and officers of all tiers of local government. The LGA has developed a code which it was felt goes probably as far as is possible within the restrictions of the current legislation. Whilst this code cannot contain any further sanctions it does extend some of the considerations of which Members should be aware and many authorities have adopted.
- 2.9 A copy of the LGA model code is attached at Appendix 1. For ease of reference the Council's current code of conduct for Members is attached as Appendix 2. The LGA model code is intended to be read in plain English and to be as clear as possible. As well as the principles highlighted in bold in the code, there is extensive supplementary guidance.
- 2.10 The adoption of the code is a council matter and so it is up to Full Council to adopt any changes in the code. Accordingly, should the committee feel that it wishes to recommend to Full Council that the model LGA, or indeed any other code is adopted, it is necessary for the committee to make such recommendations to Full Council.

- 2.11 In many ways the LGA code does not significantly extend the existing code which was adopted by the Council in 2013. However, it does make it a little clearer and extends the advice and clarity about the application of the code in more detail. It is of course possible for the Council to make any changes to the code it wishes, provided that these are within the limitations of the Localism Act. It is worth noting that there has to date been little case law on the meaning of some provisions of the Localism Act and so any code has to be considered with that caveat in mind.
- 2.12 Whilst the code of conduct itself is of core importance, it is also highly advisable that the Council considers if any other protocols or policies should be adopted by the Council to assist Members in carrying out their duties. The code of conduct should require compliance with these other provisions. The Council already has in place a separate Planning Code of Conduct, and member/officer relations protocol which sets out the way in which Members and officers should behave towards each other. However, the Council does not have in place a social media policy which sets out guidance and guidelines about the way in which Members use social media. In this way a breach of the social media policy would also automatically be considered as a potential breach of the code of conduct

Social Media Policy:

- 2.13 Social media and managing it effectively as an elected member can be challenging. Increasingly complaints received about Members originate or have some basis in social media comments and activities. Many Members will have a single social media account on which they post both councillor and private business. If they were then to be accused of putting something on a private platform not connected with the Council this could potentially be taken into account as part of a code of conduct complaint and a finding could be made of a breach.
- 2.14 However, case law provides that members of local authorities have enhanced protection in relation to freedom of speech under Article 10 (1) of the European Convention of Human Rights, which was brought into British legislation through the Human Rights Act 1998. Article 10 provides an extensive freedom for Members to hold and express opinions and in summary protects the right for them to criticise, speculate and make value judgements, provided that there is some reasonable factual basis for their opinion. Whilst the courts are likely to take a wide view of political expression this does not mean that there is no situation where Members cannot be found in breach. There is case law which makes it clear that a breach of the Members Code of Conduct can be found where comments are not considered to be political expression but are simply expressions of personal anger and abuse. The adoption by the Council of a social media policy and a requirement for compliance is intended to assist Members in their use of social media.

Councillor Complaints Process:

- 2.15 If the council wishes to consider making changes to their code, or adopting the LGA Code, it is also an opportunity to consider whether this should also include a review of the current arrangements for dealing with a complaint and the procedure for making complaints. Changes to these would, like any change to the Code, need to be approved by Full Council on recommendation from the committee.
- 2.16 Accordingly it is recommended that the committee consider the model councillor code of conduct and consider recommending to Full Council that this is adopted; and that the committee also consider asking officers to develop a social media policy which should be adopted at the same time as the model code of conduct. Officers should also be asked to review the current process for handling member code of conduct complaints and the member/officer relations protocol identifying any changes which should be made. The Committee are also asked for their views on whether a protocol should be introduced to handle Member/Member complaints. If changes are made it is highly advisable to ensure that training is made available for members at an early date.

3. Issues, Options and Analysis of Options

- 3.1 The Committee could decide to not to agree the recommendations set in the report. However, this is not recommended as it is important that the Council acts in accordance with best practice when it comes to ethical governance.
- 3.2 The recommendations provide clarity to the Council's ethical governance processes and are clearly understood by members, officers and the public, and thereby promote high standards of conduct and greater confidence in the Council.

4. Reasons for Recommendation

- 4.1 To ensure that the Council's current ethical framework, within the limitations of the Localism Act 2011, is conducive to promoting and maintaining the standards expected by the public and is strengthened. The recommendations would enhance the fairness and transparency of the standards process and protect the integrity of decision-making, whilst maintaining public confidence.

5. Consultation (including Overview and Scrutiny, if applicable)

- 5.1 The Standards and Audit Committee are the appropriate consultees for ethical standards, although the changes will be raised for noting at the forthcoming Constitution Working Group.

6. Impact on corporate policies, priorities, performance and community impact

6.1 The Council's Constitution supports the governance of the Council and its decision-making, thereby assisting the Council to meet its corporate policies and priorities, as well as maintaining public confidence.

7. Implications

7.1 Financial

Implications verified by: **Dammy Adewole**
**Senior Management Accountant – Resources
and Place Delivery**

There are no direct financial implications expected from this proposed policy change.

7.2 Legal

Implications verified by: **Gina Clarke**
**Corporate Governance Lawyer & Deputy
Monitoring Officer**

Section 27 of the Localism Act 2011, requires the Council to promote and maintain high standards of conduct by members and co-opted members and to adopt a code dealing with the conduct that is expected of members and co-opted members when they are acting in that capacity.

Section 28 of the Localism Act 2011 requires the Council's code of conduct to be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The Council may revise its existing code of conduct under section 28(5) of the Localism Act 2011.

The Council's Code of Conduct, Arrangements for handling complaints, and the Protocol for Member/Officer Relations form part of the Constitution. Only Full Council may make changes to the Constitution by virtue of Chapter 2, Part Three – Responsibility for Council functions paragraphs 1.5 and 1.9. In addition, by virtue of paragraph 1.5 approval of a Social Media Protocol to form part of the Constitution would also require Full Council approval.

As the Government has indicated that they are now actively considering the recommendations set out in the CSPL report on Local Government Ethical Standards which included that associated legislative changes be made to the ethical standards regime. An update report to the committee will include details of any proposed changes together with the further details of the proposed changes to the Council's ethical governance arrangements recommended in this report, if agreed.

7.3 **Diversity and Equality**

Implications verified by: **Rebecca Lee**
Team Manager, Community Development

The local and national codes for ethical standards referred to in the body of the report take into consideration equality and diversity requirements as set out in legislation and the Council's policies. A Community Equality Impact Assessment will be completed for any new or revised policy/ies.

7.4 **Other implications** (where significant) – i.e. Staff, Health Inequalities, Sustainability, Crime and Disorder and Impact on Looked After Children

Not applicable.

8. **Background papers used in preparing the report** (including their location on the Council's website or identification whether any are exempt or protected by copyright):

- Committee on Standards on Public Life report on Local Government Ethical Standards
- LGA model Code of Conduct and supplementary guidance

9. **Appendices to the report**

- Appendix 1 LGA model Code of Conduct and supplementary guidance
- Appendix 2 Thurrock Council Members' Code of Conduct adopted 2013
- Appendix 3 Exempt – Member Behaviour

Report Author:

Gina Clarke
Corporate Governance Lawyer
Law and Governance