

7 July 2022		ITEM: 9
Standards and Audit Committee		
Ethical Standards		
Wards and communities affected: N/A	Key Decision: Non-Key	
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		

Executive Summary

The committee in March 2022 considered the Local Government Association's LGA's model Councillor Code of Conduct, agreed that Monitoring Officer review the process for handling Member Code of Conduct complaints, and the Protocol on Member/Officer relations (with potential to introduce a Member/Member Protocol) and to develop a social media policy.

The committee is asked to recommend to Council that the Local Government Association's (LGA) model Councillor Code of Conduct and the Social media policy for Members are adopted. The committee is asked to consider the LGA's Guidance on Member Code of Conduct Complaints Handling.

1. Recommendation(s)

- 1.1 **The committee recommend to Full Council the adoption of the Local Government Association Model Councillor Code of Conduct as set out in Appendix 1.**
- 1.2 **The committee consider and recommend to Full Council the adoption of the Social Media policy for Members as set out in Appendix 2**
- 1.3 **The committee consider the LGA's Guidance on Member Code of Conduct Complaints Handling and that the Monitoring Officer revises the Council's existing arrangements to reflect best practice.**

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) 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 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
 - not to participate in any behaviour which would be felt to be inadvisable or inappropriate.
- 2.4 The Council's current code of conduct was adopted in 2013 and has the potential to be refreshed to give greater clarity on the standard of behaviour expected of Member and to cover issues such as the use of social media and the need to observe confidentiality in electronic communications.
- 2.5 The Local Government Association ('LGA') Model Code was presented to the last meeting of the committee for consideration and to recommend to Council to adopt the Model Code. As the committee has had the opportunity to consider the Model Code, it is proposed that the committee now agree to recommend to Council adopt the Model Code now that the outcome of the Government's consideration of the recommendations of the Committee on Standards and Public Life CPSL report has been published. The Government's response in relation to the CPSL's recommendation that local authorities should be given power to suspend Councillors who are found to

have breached their Council's code of conduct is set out in paragraph 2.20.of. below.

- 2.6 A copy of the LGA model code is attached at Appendix 1. The main provisions of the LGA Model Code of Conduct are summarised below:

The code of conduct applies as soon as a Member sign their declaration of acceptance of the office of councillor form and continues to apply until they cease to be a Councillor. It also applies when acting in the capacity as a Councillor and applies to all forms of communication and interaction including electronic and social media communication. This can include when a member of the public could reasonably have the impression a Member was acting as a councillor.

The Code sets out obligations, which are the minimum standards of conduct required of a councillor. These cover treating people with respect, not to bully, harass any person, a requirement to promote equalities and not unlawfully discriminate against any person, impartiality, confidentiality, and access to information, not bringing the Council into disrepute, use of a Member's position and use of Council resources and facilities. There is also a requirement for a Member to undertake code of conduct training, to co-operate with a code of conduct investigation, not intimidate any person involved in any investigation and comply with any sanctions imposed.

The Code sets out requirements to protect the reputation of Members and the reputation of their Authority - for Members to register and declare interests in situations where a conflict of interest might arise. In addition to the statutory Disclosable Pecuniary Interests which Members must register, declare, and not participate in meetings. This also covers the disclosure of Other Registrable Interests and Non-Registrable Interests. The model code introduces an obligation to register as an Other Registerable Interest any unpaid directorships. Non-registrable interests cover situations where a matter affects a member's financial interest or wellbeing, or that of a friend, relative or close associate.

The model code introduces an obligation not to accept and gifts or hospitality of any value which could give rise to real or substantive personal gain or reasonable suspicion of influence/ from any person who may apply to the council for any permission or licence or significant advantage. Gifts or hospitality of £50.00 or more in value must be registered, as must any significant gift or hospitality which has been offered but has been refused.

- 2.7 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, it is necessary for the committee to make such recommendations to Full Council.
- 2.8 In many ways the LGA code is clearer of the standards expected of Members then the existing code which was adopted by the council in 2013. It

extends the advice and clarity about the application of the code in more detail. It is open to the council to make any changes to the code it wishes if these are within the scope 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 must be considered with that caveat in mind.

Social Media Policy

- 2.9 The use of 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 considered as part of a code of conduct complaint and a finding could be made of a breach.
- 2.10 Members of local authorities have enhanced protection in relation to freedom of speech under Article 10 (1) of the European Convention of Human Rights, for Members to hold and express opinions and in summary protects the right for them to criticise, speculate and make value judgements, if there is some reasonable factual basis for their opinion.
- 2.11 However 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. Therefore, Members how make comments on social media which fall outside their enhanced protections right are liable to found in breach of the Member Code of conduct. A copy of the proposed Social Media policy for Members is attached at Appendix 2. The committee is invited to recommend to Council to adopt the social media policy for the policy to be adopted at the same time as the new code. The requirement for compliance with the proposed policy is intended to assist Members in their use of social media.

Councillor Complaints Process

- 2.12 Section 28 of the Localism Act 2011 requires, the council to have in place arrangements under which allegations that a Member has failed to comply with the council's code of conduct can be investigated and decisions made on such allegations. The Act requires that arrangements agreed by the council must include provision for the appointment by the authority of at least one independent person whose views are to be sought and considered, by the council before it makes its decision on an allegation that it has decided to investigate. However, the Act it does not set out how complaints are to be handled.
- 2.13 The CSPL also made recommendations for a framework in dealing with complaints to ensure consistency and enhance public confidence in the process. In response to requests received by the LGA as part of its

consultation in 2020 on the LGA model councillor code of conduct, it has prepared guidance on handling member code of conduct complaints. The guidance is designed to assist monitoring officers, and anyone nominated by a monitoring officer to conduct investigations on their behalf and to assist councillors in understanding the process (Appendix 3).

- 2.14 The Monitoring Officer plays a key role to drive higher standards and better conduct, by promoting education and support to councillors. Under the existing arrangements, the Monitoring Officer has authority to undertake an initial assessment of complaints. The assessment of a complaint would normally be a two-step process, described in the CPSL report as the 'can/should' stages – the first stage being 'can we deal with this complaint?' and the second being 'should we deal with this complaint?' The first step would be a jurisdictional test the complaint fails one or more of these tests it cannot be investigated as a breach of the Code, and the complainant must be informed that no further action will be taken in respect of the complaint. If there is any doubt, however, the allegation should proceed to the second stage. Once these jurisdictional tests have been met the complaint is then assessed against criteria set out in the arrangements and decides what action, if any, to take. These criteria should reflect local circumstances and priorities and be simple, clear, and open. They should ensure fairness for both the complainant and the subject member. In Thurrock, the Monitoring has delegated authority to carry out the initial assessments of complaints as outlined above, and to decide what action if any should be taken.
- 2.15 The council's existing arrangements for handling member code of conduct complaints at Appendix 4, would benefit from being updated to clarify any areas of ambiguity and provide additional clarity to the complaints process and incorporate other processes detailed in the LGA Guidance to reflect best practice, to:
- (i) provide greater clarity as timescales of the steps for assessing complaints
 - (ii) to review and update the assessment criteria against which complaints are initially assessed.
 - (ii) an alternative process for assessment of a complaint by a Panel of Members where the Monitoring Officer considers it appropriate based on specified criteria e.g., where the matter is high profile, or the Monitoring Officer has a conflict of interest
 - (iii) No right of appeal/ review against a decision not to take any further action to operate an efficient and proportionate system.
 - (iv) Best practice for conducting investigations and producing a final report.
- 2.16 It is recommended that the Monitoring Officer updates the Council's existing arrangements to reflect best practice set out in the LGA Guidance Standards Committee may make such amendments to the proposed revised procedures as it considers appropriate. A further report to come back to the next committee meeting for the committee to consider the proposed changes with a recommendation that the committee recommend to Full Council to approve the changes.

Sanctions

- 2.17 One of the recommendations of the CSPL was that local authorities be given the power to suspend councillors without allowances for up to six months for breaches of the code of conduct. The Government's published response of 18 March 2022 to the CPSL's recommendation on such a sanction is:

"There is no provision in current legislation for a sanction to suspend a councillor found to have breached the code of conduct, and this was a deliberate policy decision by the Coalition Government at the time of the Localism Act 2011 to differentiate from the previous, failed Standards Board regime. The Standards Board regime allowed politically motivated and vexatious complaints and had a chilling effect on free speech within local government. These proposals would effectively reinstate that flawed regime.

It would be undesirable to have a government quango to police the free speech of councillors; it would be equally undesirable to have a council body (appointed by councillors, and/or made up of councillors) sitting in judgment on the political comments of fellow councillors.

On the rare occasions where notable breaches of the code of conduct have occurred, local authorities are not without sanctions under the current regime. Councillors can be barred from Cabinet, Committees, or representative roles, and may be publicly criticised. If the elected member is a member of a political group, they would also expect to be subject to party discipline, including being removed from that group or their party. Political parties are unlikely to reselect councillors who have brought their group or party into disrepute. All councillors are ultimately held to account via the ballot box.

As part of the government's response to the Committee's report on intimidation in public life, the government recommended that every political party establish their own code of conduct for party members, including elected representatives.

The government will engage with sector representative bodies of councillors and officers of all tiers of local government to seek views on options to strengthen sanctions to address breaches of the code which fall below the bar of criminal activity and related sanctions but involve serious incidents of bullying and harassment or disruptive behaviour."

- 2.18 The implication of the government's response on sanctions is that the council or a committee of the council has limited powers to only impose certain measures as sanctions which does not in any way interfere with the Councillor's duties or the will of the electorate.
- 2.19 Typical sanctions which can be imposed may include one or a combination of the following:

- Making a finding the Councillor has breached the code and report it to council
- Resolving to formally censure the Councillor
- Recommend to the Councillor's group leader (or in the case of un-grouped councillors, recommend to council) that they be removed from any or all committees or sub-committees, or Outside Body (as appropriate)
- recommend to the Leader of that the subject member be removed from positions of responsibility
- Requiring the Councillor to undergo training.
- if relevant recommend to council that the Councillor be removed from their role as leader of the authority
- if relevant recommend to the secretary or appropriate official of a political group that the councillor be removed as group leader or other position of responsibility.
- Removing equipment/facilities for a specified period where there is a clear link to the breach, and it proportionate to take such action

2.20 In certain circumstances there are criminal sanctions which amount to a criminal offence.

- Section 34 of the Localism Act makes it a criminal offence if a member or co-opted member fails, without reasonable excuse, fails to register or declare disclosable pecuniary interests, or take part in council business at meetings or when acting alone when prevented from doing so by having a pecuniary interest and not having obtained a dispensation. Complaints are investigated by the police and prosecuted by the Director of Public Prosecutions. If convicted a Magistrates Court can impose a fine of up to £5000 and an order disqualifying the person from being a member of a relevant authority for up to five years. There has been one conviction since 2012 when the section came in which led to a conditional discharge and no disqualification.
- If a Councillor commits a criminal offence and is sentenced to a term of imprisonment of 3 months or more, they are automatically disqualified. The same applies to a Councillor who commits certain sexual offences or must make certain notifications or has orders imposed in respect of sexual offences under the recent Local Government (Disqualification) Act 2022

2.21 Accordingly, it is recommended that the committee recommend to Full Council that the LGA model code and the social media policy be adopted by Full Council at the same time. In addition, it is recommended to the committee to consider the LGA guidance for handling member code of conduct complaints and that the Monitoring Officer revises the Council's existing arrangements to reflect best practice.

3. Issues, Options and Analysis of Options

- 3.1 The Committee could decide to not 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.
- 4.2 Revising the authority's arrangements reflect best practice and in accordance with the principles, of fairness, transparency, proportionately and impartially thereby giving the public and councillors confidence in the process.

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 & Equalities

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/policies.

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
- Appendix 2 Social Media Guidelines for Councillors
- Appendix 3 LGA Guidance on Member Model Code of Conduct Complaints Handling
- Appendix 4 Thurrock Council's Procedure for making a complaint against a Councillor

Report Author:

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Corporate Governance Lawyer & Deputy Monitoring Officer

Law and Governance