

CONSTITUTION AND STANDARDS COMMITTEE

Wednesday, 25 November 2020

REPORT TITLE:	UPDATE ON THE PREPARATION OF THE MODEL CODE OF CONDUCT
REPORT OF:	DIRECTOR OF LAW AND GOVERNANCE

REPORT SUMMARY

This report provides Members of the Constitution and Standards Committee with an update on progress in respect to the preparation of a revised Model Code of Conduct.

The Committee on Standards in Public Life (CoSPL) report published in January 2019 recommended creating an updated model Code of Conduct, by the Local Government Association (LGA) in consultation with representative bodies of councillors and officers of all tiers of local government.

LGA Workshops of Members and Monitoring Officers took place to discuss the approach and content of the revised Code.

Consultation on a draft Code ran for 10 weeks from Monday 8 June until Monday 17 August 2020.

In light of the feedback and discussion on 22 October 2020, the LGA will now review the draft and a final Code will then be prepared for submission to the LGA board for approval on 3 December 2020. The approved Code will then be published.

RECOMMENDATION/S

The Constitution and Standards Committee are recommended to note the report.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATION/S

Timeline

- 1.1 The Committee on Standards in Public Life (CoSPL) report published in January 2019 recommended creating an updated model code of conduct, by the Local Government Association (LGA) in consultation with representative bodies of councillors and officers of all tiers of local government.
- 1.2 Workshops of members and Monitoring Officers took place to discuss the approach and content of the revised Code.
- 1.3 Consultation on a draft Code ran for 10 weeks from Monday 8 June until Monday 17 August, which included:
 - 4 webinars were conducted with over 1000 participants
 - Over 1600 written responses to the consultation received.
 - Lots of comments questions and feedback provided during the webinar sessions
- 1.4 High level consultation summary response, that included overwhelming support for the Code. But a number of issues were raised:
 - First person or third person
 - Respect or Civility?
 - More on social media including confidentiality.
 - Declaration of gifts £25 too low, £50 too high?
 - Need for accompanying guidance with examples
 - Equality Act - obligation to comply
 - Obligation to cooperate with investigation
 - Compulsory training for members
 - Sanctions
- 1.5 A stakeholder roundtable to discuss the response and next steps took place on 30 September 2020. The revised draft Code was considered at an LGA Councillors Forum on 22 October 2020.

Next Steps

- 1.6 LGA will now review the draft in light of the discussion on 22 October 2020.
- 1.7 A final Code will then be prepared for submission to the LGA board for approval on 3 December 2020. The approved Code will then be published.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 This report is for information only. No other options to be considered at this time.

3.0 BACKGROUND INFORMATION

- 3.1 Across the United Kingdom, local government is organised and administered in either a two-tier structure of county and district authorities or a unitary structure of borough or city councils. At the local level there are parish and town councils. In England and Wales most local council services are administered by the principal authority which is either the unitary authority or, in a two-tier structure, the county council. Many local authorities now share the administration of local services and some have formally joined forces in new combined authorities, often based on a city region. At the local level, parish, community and town councils also have responsibility for local issues, such as community centres and neighbourhood planning.
- 3.2 It is important to acknowledge the scale and scope of local government as well as the complexity of modern governance arrangements for service delivery. There are tens of thousands of elected councillors representing all the major parties with a growing independent sector. Most of these elected representatives have strong ties with the areas they represent, not least because they live in the locality. This can pose particular challenges in relation to the management of conflicts of interests and can test ethical standards more generally. Local government has a wide range of legal duties and is increasingly contracting out services or work in partnership with neighbouring authorities, the voluntary sector and private providers.
- 3.3 The responsibility for ethical standards in local authorities has undergone much change in recent years, which rather than mirroring the increased codification of standards elsewhere in the standards regime has resulted in much greater freedom across councils to set and maintain standards. The 2011 Localism Act stripped back regulation and oversight to a bare minimum, resulting in a regime that has resorted to “hard law, almost complete local autonomy, with minimum direction and intervention from the centre”.
- 3.4 The Act placed responsibility for the conduct of councillors in the hands of local authorities, which are responsible for maintaining a Code of Conduct and a register of disposable pecuniary interests, and must also deal with alleged breaches of the Code and registration requirements.
- 3.5 There is no requirement for local authorities to provide a Code of Conduct for local authority staff, but many continue to do so.
- 3.6 The 2011 Act dismantled the regime that had been in place since 2000 with centralised powers of oversight and monitoring. The Local Government Act 2000 had instituted measures of oversight, including a model Code of Conduct, which local authorities were required to integrate into their own; a Standards Board for England to promote high standards and investigate complaints; Adjudication Panels to adjudicate on investigations; and Standards Committees in each local authority to promote high standards of conduct.
- 3.7 However, both the functioning and the reception of this system of regulation was highly criticised with the Standards Boards, at least initially, taking an extended time to resolve complaints.

- 3.8 Following significant criticism, including from the CoSPL, a number of adjustments were made through the Local Government and Public Involvement in Health Act 2007, which primarily provided increased opportunities for resolving complaints at the local level. The assessment of the allegations were now to be made by Standards Committees, and the Standards Board (now named Standards England) took on an oversight role and acted as a “strategic regulator”. Despite the changes, sustained criticism led to an overhaul of the regime in 2011, including the abolition of Standards England.

Codes of Conduct and Guidance

- 3.9 Since 2012, local authorities have been responsible for creating their own Codes of Conduct, which should incorporate the Seven Principles of Public Life. These Codes are much less consistent than previously, where the rules and provisions of a model code had to be incorporated. The Department for Communities and Local Government has published an illustrative text but states explicitly that councils can “choose” whether or not they use it as the basis for their own Codes of Conduct. In 2013, the Department also provided a guidance document for Councillors on dealing with their personal interests. The Guidance makes it clear that it is a criminal offence to fail to tell the Monitoring Officer about disposable pecuniary interests, or to knowingly provide false or misleading information.
- 3.10 The Local Government Association also provides a model Code of Conduct for local authorities to use as a basis for their own. In its 2019 review of local government standards, the CoSPL proposed that the Local Government Association should be responsible for updating a model code of conduct, in consultation with councillors at all levels.
- 3.11 The primary upholders of standards in local government are the Local Authorities and the Local Government and Social Care Ombudsman.

Breaches of the Code

- 3.12 There should be mechanisms in place to investigate breaches of the Code, although these can vary depending on the processes put in place by the local authority; these might include the creation (or maintenance) of a Standards Committee, but this is not a requirement.
- 3.13 There are provisions for the appointment of an Independent Person, whomust be consulted during an investigation into an alleged breach of the Code and can also be consulted by the accused individual. The 2011 Act abolished the requirement of having independent lay people on Standards Committees, previously the requirement was for 25%.
- 3.14 The CoSPL criticised the reduced role of lay members in its 2013 report. In 2019, the CoSPL recommended that the views of the Independent Person should be formally recorded in any decision notice or minutes.
- 3.15 The procedures for investigations vary, with some authorities having created a Standards Panel to hear the case or consider the investigation report. The presumption is that hearings should be held in public. There is no higher authority for appeals of decisions, except through the courts, although the Local Government

Ombudsman can investigate the process by which decisions were reached (see below).

Sanctions

- 3.16 There has been a considerable weakening of sanctions in the 2012 regime compared to those that preceded it. Councils have the ability to censure members or remove them from committees, but short of criminal prosecution there is little else that can be used as a sanction.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are no financial implications arising from this report.

5.0 LEGAL IMPLICATIONS

- 5.1 Section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011) requires that:

- '(1) A local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains—
- (a) a copy of the authority's standing orders for the time being
 - (b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
 - (c) such information as the Secretary of State may direct, and
 - (d) such other information (if any) as the authority considers appropriate.'

Changes to the Council's Standing Orders within the Constitution can only be made with the approval of the Full Council after consideration of the proposal by the Standards and Constitution Committee following receipt of a written report by the Monitoring Officer.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are no resource implications arising from this report.

7.0 RELEVANT RISKS

- 7.1 There are no specific risks associated with this report

8.0 ENGAGEMENT/CONSULTATION

- 8.1 The Standards and Constitutional Oversight Committee working group were consulted on this matter and the Head of Legal Services provided a formal response to the consultation on their behalf.

9.0 EQUALITY IMPLICATIONS

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure

equality for anyone who might be affected by a particular policy, decision or activity.
There are no equality implications arising from this report.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are none arising directly from this report.

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APPENDICES

Appendix 1 LGA 'Civility in public life and the review of the model code of conduct'.

Appendix 2 The Local Government Association Model Member Code of Conduct
Consultation Draft.

Appendix 3 The Committee on Standards in Public Life - Standards Matter 2: Terms of
Reference.

BACKGROUND PAPERS

Committee of Standards in Public Life report 30 January 2019.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date