

STANDARDS REPORT**REPORT OF THE LEGAL ADVISER AND MONITORING OFFICER****For Information****1. PURPOSE OF REPORT**

- 1.1 To up-date the Committee on comments received on the Local Government Association's (LGA) Model Member Code of Conduct and further to the earlier report received by the Committee on the then 'draft' Model Code (reports on 22 February, 2019 and 27 November, 2020 refer).

2. RECOMMENDATION

- 2.1 That Members note the contents of this report and make recommendations to the Fire Authority on any revisions to the existing Members Code of Conduct.

3. INTRODUCTION

- 3.1. Following the publication of the Committee on Standards in Public Life (CSPL) 'Local Government Ethical Standards' (January, 2019), the LGA published a draft Model Code of Conduct and an accompanying consultation exercise, upon which the Audit and Governance Committee provided a response. The Local Government Act, 2000, had made provision for a Model Code of Conduct and one was introduced under The Local Authorities (Model Code of Conduct) (England) Order, 2001, with later revisions in 2007. The position was then changed through the Localism Act, 2011, which dispensed with a 'Model Code', leaving Authorities able to adopt a Code of their choice, provided '*when viewed as a whole*' a Code is consistent with the seven principles of conduct in public life.
- 3.2. The LGA's Model Code is attached herewith (Appendix 1) and has a number of similarities with the Code already adopted by the Cleveland Fire Authority (Appendix 2). In particular both Codes annex 'The Relevant Authorities (Disclosable Pecuniary Interests) Regulations, 2012' and the Authority's Code also references the LGA's earlier 'Template Code and Guidance Note on Conduct'.

4. LGA DRAFT MODEL MEMBER CODE OF CONDUCT

- 4.1. Government response to the CSPL's review of standards is still awaited. It is likely (as was previously the case) that the introduction of a 'new' Model Code of Conduct would require legislation in order to give the Code statutory effect particularly on the re-introduction of a sanctions regime underpinning an ethical framework, which was a clear focus on the CSPL's review and its recommendations.

However, Lawyers in Local Government (LLG) has noted that '*despite the draft Member Code of Conduct including a bar on attending committees for up to 2 months as a sanction, the published code contains no reference to a sanction of any kind*'. Additionally, LLG also noted the following;

- There is no power to suspend councillors, without allowances, for up to six months
- There is no reference to a role for the Local Government Ombudsman (who would operate as an appeals process)
- There is no discretionary power to establish a decision-making Standards Committee with voting Independent Person(s),
- There is no mention of and the status of an Independent Person(s),
- Gifts and Hospitality has risen from the proposed £25 to £50 recommended by the Committee on Standards in Public Life,
- Broadly the Code encompasses the CSPL recommendation when a member is acting in an official capacity which includes reference to social media (ie., holding themselves out as being a Councillor or otherwise acting or giving the impression of acting in that 'official capacity') but this does require a change of legislation to engage the presumption under Section 27(2) Localism Act 2011, ie., that they are "acting in that capacity."

4.2. The LGA have indicated that the Code would be subject to an annual review to ensure it remained '*fit for purpose*'. There is also the added uncertainty of the Government's eventual response whilst it continues to consider the CSPL's recommendations.

4.3. The Authority's Code has many of the features introduced under the LGA Model for example, treating others with respect (the LGA draft initially referenced "civility"), maintaining confidentiality and not to misuse the Authority's resources. The Authority also requires Members to register any gifts or hospitality over £25 and whilst the LGA Model Code references the sum of £50, Members have previously taken the view that the lower limit of £25 was suitable. The two areas in the LGA Model Code worthy of consideration to incorporate within the Authority's Code is the specific mention of 'Bullying, Harassment and Discrimination' and that a Member should not bring the Authority into 'Disrepute'. These areas are covered under a general obligation within the Authority's Code '*not to conduct yourself in a manner which is contrary to the Authority's duty to promote and maintain high standards of conduct*' (Section 27 (1) of the Localism, Act, 2011 refers) but Members may be of the view that these specific references would assist and enhance the existing Code. These provisions within the LGA Model Code are referenced below with grammatical adaptations where required to comply with the present wording and context of the Authority's Code;

Bullying, harassment and discrimination

As a Member of the Authority:

2.1 You must not bully any person.

2.2 You must not harass any person.

2.3 You must promote equalities and not discriminate unlawfully against any person.

The Advisory, Conciliation and Arbitration Service (ACAS) characterises bullying as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. 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 may not always be obvious or noticed by others.

The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.

Unlawful discrimination is where someone is treated unfairly because of a protected characteristic. Protected characteristics are specific aspects of a person's identity defined by the Equality Act 2010. They are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Equality Act 2010 places specific duties on local authorities. Councillors have a central role to play in ensuring that equality issues are integral to the local authority's performance and strategic aims

Disrepute

As a Member of the Authority:

5.1 You must not bring your role or that of the Authority into disrepute.

As a Member, you are trusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on you, other Members and your Authority and may lower the public's confidence in your or your Authority's ability to discharge your/it's functions. For example, behaviour that is considered dishonest and/or deceitful can bring your Authority into disrepute.

You are able to hold the Authority and fellow Members to account and are able to constructively challenge and express concern about decisions and processes undertaken by the Authority whilst continuing to adhere to other aspects of this Code of Conduct.

5. CONCLUSION

- 5.1. The Authority has a Code of Conduct which is compliant with the Localism Act, 2011. Further, the Code already has many of the features of the Model Code of Conduct introduced by the LGA (publication date 23 December, 2020). That Model Code has no statutory force and it is therefore at the discretion of each 'Relevant Authority' to decide whether to adopt the LGA Code in full or partially or not at all. There is present uncertainty as public bodies await the outcome of the Government's response to the CSPL's recommendations. Members of the Committee may wish to leave the existing Authority Code unaltered whilst it awaits future legislation and/or guidance, but if they believe change is warranted then the references within paragraph 4.3 may assist in that determination.

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