

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

- 1.1 To appraise the Committee of the Local Government Association's (LGA) 'Guidance on the Local Government Association's Model Councillor Code of Conduct' as published on 8 July 2021. Further to highlight other matters of interest to the Committee in performing their function of '*advising the Authority on promoting and maintaining good ethical governance and standards.*'

2. RECOMMENDATIONS

- 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 after an accompanying consultation exercise, issued a finalised version in December 2020. On 8 July 2021, the LGA published 'Guidance on the Local Government Association's Model Councillor Code of Conduct' (Appendix 1).
- 3.2. The LGA indicate that this 'supporting guidance' is to assist with an understanding of the Model Code, achieve consistency in approach and to 'safeguard the public's trust and confidence in the role of councillor in local government.'

4. THE LGA GUIDANCE

- 4.1. The LGA Model Code is seen as a 'template' document for public bodies to adopt in its entirety or with amendments. The Committee did recommend to the Authority at its Annual Meeting the adoption of certain descriptors used within the Model Code namely, those relating to; bullying, harassment and discrimination and in relation to bringing the Authority into disrepute. This would allow a broader interpretation of such factors and hopefully assist the Committee in its determination on issues arising from any complaint received.

4.2. The Guidance is divided into the following constituent parts:

- the General Principles of Councillor Conduct i.e. the original seven ‘Nolan Principles’ (selflessness, integrity, objectivity, accountability, openness, honesty and leadership);

- Application of the Model Councillor Code of Conduct, in that the Code is only engaged where a councillor acts in that ‘capacity’. This may include:

- (i) you misuse your position as a councillor
 - (ii) your actions would give the impression to a reasonable member of the public with knowledge of all the facts that you are acting as a councillor;

- General Obligations under the Code of Conduct in relation to i.e. Respect, Bullying, Harassment, Discrimination, Impartiality of officers, confidentiality and access to information, disrepute, misuse of position, misuse of resources and facilities, complying with the Code of Conduct;

- Protecting your reputation and the reputation of the local authority, through i.e. the registration of gifts, hospitality and interests, the declaration of interests, bias and predetermination.

4.3. The Fire Authority’s own Code of Conduct has most of the features of the LGA Model Code but with additional requirements that were carried over from the original Code adopted under the Local Government Act, 2000, primarily the requirement to declare personal and prejudicial interests as opposed to purely ‘disclosable pecuniary interests’

4.4. As previously reported to the Committee, 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 that the Prime Minister has yet to respond to the CSPL report and its recommendations.

5. CASE OF BENNIS -v- ICO [2021]

5.1. There is a decision arising in a case of a Stratford Councillor who sought the disclosure of comments from the Independent Persons (IPs), following a complaint made against the Councillor under the Code of Conduct provisions. The request for disclosure was made under the Freedom of Information Act, 2000, which was considered by the Information Commissioner and then on an appeal to the First Tier Tribunal.

5.2. The Information Commissioner concluded that it was reasonable for the District Council to have withheld information comprising the IPs views on a complaint which alleged councillor misconduct, on the basis that publication would be likely to inhibit the free and frank provision of future advice and would be likely to be otherwise prejudicial to the effective conduct of public affairs. The Commissioner applied the public interest test set out in s.2(2) of the Freedom of Information Act, 2000 and decided that the public interest did not outweigh the exemption on non-disclosure being maintained.

- 5.3. Mr Bennis appealed but his appeal was rejected by the First Tier Tribunal (FTT). The FTT said it was satisfied that the focus of the appellant's grounds of appeal was the public interest balancing test. The Tribunal also noted the generalised nature of the appellant's case, which relied on the public interests of transparency, openness and accountability in relation to public sector activities. The FTT said it was satisfied that the ability of the IPs to provide candid and uncensored advice to the monitoring officer was an important part of the council's complaint system. "*We find that any inhibition of the IP's advice is likely to reduce the effectiveness of the complaints system overall and to have a negative impact on the quality of decisions taken. We find in addition that there is a strong public interest in avoiding detriment to the Council's process for dealing with complaints made against elected officials.*" Having considered all matters, the FTT concluded that the public interests of transparency, openness and accountability were outweighed in this case by the significant public interest in avoiding the risk of inhibition of the IPs' candid advice, and in maintaining the effectiveness of the council's complaint process that might otherwise be undermined.

The case can be found through the following link: Cyril Bennis –v- Information Commissioner [2021] and can be accessed via https://www.bailii.org/uk/cases/UKFTT/GRC/2021/2017_0220.html.

6. CONCLUSION

- 6.1. The Authority has a Code of Conduct which is fully compliant with the Localism Act, 2011. Further, the Code has many of the features of the Model Code of Conduct introduced by the LGA (December 2020) including those amendments to the Code as resolved by the Fire Authority at its Annual Meeting. There remains some uncertainty as public bodies await the outcome of the Prime Minister's response to the CSPL's report and recommendations on standards, which will be reported to the Committee once received.

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