

CODE OF CONDUCT WORKING GROUP

REPORT TO AUDIT COMMITTEE

Background

- 1 At its meeting on 25 March 2019 the Audit Committee approved the establishment of a Working Group of Members to consider the Committee on Standards in Public Life Report on Ethical Standards in Local Government.
- 2 The Working Group consisted of Cllr T Ashton, Cllr J Brockway, Cllr I Fleetwood, Cllr A Newton, Cllr R Parker Cllr P Skinner and Cllr B Young. Cllr Young was elected as the Chairman of the Group at its first meeting. As a result of substitution contributions were also made to the work of the Group by Councillor C Brewis.
- 3 The terms of reference of the Working Group were set by the Audit Committee as follows – to:-
 - 1) Consider the Committee on Standards in Public Life report on Local Government Ethical Standards.
 - 2) Consider whether changes to the Code and Local Arrangements should be made as a result of the Report or otherwise.
 - 3) Consider whether any changes should be made to any other elements of Part 5 of the Constitution which relate to standards.
- 4 The Working Group resolved to operate informally. It received reports from the Monitoring Officer to place the issues in context and prompt discussion and sought to reach consensus on the issues before it. It determined its own work plan with the assistance of the Monitoring Officer. That work plan considered the following issues in the following order
 - Code of Conduct
 - Interests, Gifts and Hospitality
 - Local Arrangements
 - Part 5 of the Constitution

These headings are also used to structure this Report.

National and Lincolnshire County Council Context

- 5 The Council is under an obligation under section 27 of the Localism Act 2011 to promote and maintain high standards of conduct by members and co-opted members of the authority. It must, in particular, adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity. That Code must be consistent with the Seven Principles of Public Life ("the Nolan Principles") of Selflessness, Integrity, Objectivity, Accountability, Openness, Honesty and Leadership.

- 6 Members are required by section 30 of the 2011 Act to register a defined list of statutory disclosable interests with the Monitoring Officer and required by section 31 of the Act not to participate in any discussion or vote in respect of any matter in which he or she has a disclosable pecuniary interest.
- 7 A number of criminal offences are created by section 34 of the Act including where a member fails to disclose a disclosable pecuniary interest or participates in a discussion or vote on a matter in which he or she has a disclosable pecuniary interest.
- 8 This list of disclosable pecuniary interests does not prevent a Council from including other interests within its Code.
- 9 The most immediate national context for reviewing the Code of Conduct is the publication in January 2019 of the CSPL Report. That report considered the state of standards in local government. The CSPL recognised that the vast majority of councillors and officers maintain high standards of conduct but made a number of recommendations and best practice for both the government and local authorities to consider.
- 10 The headline issues from the CSPL Report can be summarised as follows:-
- Standards should remain a local matter
 - A model code should be produced to facilitate consistency
 - The registration of interests provisions should be strengthened but decriminalised
 - Gifts and hospitality provisions should be strengthened
 - Codes of Conduct should not simply adopt the Nolan Principles which are standards and not a code
 - Sanctions should be clarified and strengthened to include a new power to suspend
 - The role of the Independent Person should be strengthened and formalised
- 11 More locally the Working Group heard from the Monitoring Officer that in his first year in office September 2018 to September 2019 he had dealt with 9 complaints of breach of the Code of Conduct. None of these had been made by one County Councillor against another County Councillor. 6 were from members of the public, 1 was from an external councillor and two from individuals representing other bodies. 7 of these were made under the heading of Respect. Two of the complaints were deemed not to relate to activity in the capacity of County Councillor. Of the remaining complaints 4 were judged not to engage the Code of Conduct. Two of the complaints engaged the Code of Conduct but did not call for an investigation because the behaviour complained of did not have a significant impact on the reputation of the Council. One complaint was returned for additional detail to be provided.
- 12 This was similar to the previous period from August 2017 to August 2018 when 8 complaints were received. Again none of these were by one County Councillor against another. 5 were from members of the public and two from

external Councillors. One did not relate to the member's capacity as a County Councillor, 4 were not considered to engage the Code of Conduct and 2 were not considered to give rise to a serious risk to the reputation of the Council. None went to a hearing.

- 13 This low level of activity is consistent with the findings of an Ethical Governance Audit reported to the Audit Committee also on 25 March 2019. It suggested to the Working Group that there were no grounds for immediate concerns in relation to the behaviours of Councillors or the Code but it was important to have regard to the work of the CSPL and to look to future-proof the Code of Conduct and Local Arrangements to ensure they reflect good practice should that position change.
- 14 The Working Group's approach was structured against the Recommendations and Best Practice Recommendations of the CSPL insofar as they impacted on each of the four work streams and insofar as they were in the power of the Council to implement. Appendix A sets out each of these Recommendations and Best Practice Recommendations for each work stream and sets out the outcome of the Working Group's deliberations. The rest of this Report deals with some of these points in more detail.

Code of Conduct

- 15 The Working Group considered the Code of Conduct in some detail.
- 16 It noted that the CSPL Report had advised that a Code should not simply consist of the Nolan Principles which were standards and not a code. It also noted the example extracts from Codes given in the CSPL Report and had regard to other example Codes of Conduct, specifically Kent County Council. It noted that these codes read very differently from the Lincolnshire Code. They tended to be more negatively expressed, more legalistic in their language and more specific in their prohibitions.
- 17 However it was clear that the Council's Code did not consist simply of the Nolan Principles and that these had been interpreted at the time the Code was first adopted. Furthermore the wider definitions contained in the Code enabled it to cover potentially a wider range of behaviours. The definition of Respect, for example, was wide enough to cover bullying and harassment.
- 18 At the same time there were omissions from the Code compared with example Codes from elsewhere. The most significant one perhaps related to confidentiality where the wording of the Openness section of the Code gave too much emphasis to sharing of information and not enough to maintaining confidentiality in information which should not be shared.
- 19 Overall the Working Group's conclusion was that the existing Code of Conduct did form the basis for a workable Code but that it would benefit from amplification and clarification in specific respects. The Working Group has produced an amended Code of Conduct which is attached at Appendix B with

the changes shown as tracked. A commentary on these changes is given below.

Integrity

- 20 A specific reference to compliance with the Council's requirements around Gifts and Hospitality has been added so that Gifts and Hospitality are clearly incorporated within the Code of Conduct. This is considered further in the separate section on Gifts and Hospitality below.

Accountability

- 21 It was considered that this should be expanded to specifically cover co-operation with the Monitoring Officer or Local Hearing Panel in the course of consideration, investigation or determination of any complaint brought under the Code of Conduct. While there was no evidence of a lack of co-operation this was recommended by the CSPL and the Working Group felt that the Code should be clarified to be clear that it covered this point.
- 22 As there was not an issue within the Council with trivial or malicious complaints there was not felt to be a need to prohibit them within the Code. Such complaints, wherever they came from could be dealt with in the Local Arrangements (see below).

Openness

- 23 As discussed above the Working Group felt that this was the place to incorporate some provisions about confidentiality on which the Code is currently silent.
- 24 The change to this section draws a distinction between information given to Councillors in reports which are exempt or confidential under the Local Government Act (LGA) 1972 and information that may be given to them in confidence in other circumstances.
- 25 It was felt that the need not to disclose exempt or confidential information under the LGA 1972 was well understood and there were ways in which any concerns could be raised within the Council. In other circumstances however Councillors may find themselves in possession of information that is purportedly given them in confidence but which they feel unable to keep confidential due to an overriding public interest for example.
- 26 The drafting seeks to draw this distinction and to make provision for circumstances in which a disclosure would not be a breach of the Code. This is done by reference to disclosures that are permitted by law. Although this is somewhat vague and uncertain as expressed it is very difficult to cover this in any detail without creating other risks such as the Code becoming out of date as the law of confidentiality changes.

- 27 It was felt that this bare statement can and should be supplemented by further guidance or training on when a confidentiality obligation might arise and the circumstances in which a public interest justification may allow disclosure. This would allow members to manage the sometimes very difficult balancing act they may face between individual confidences and the wider public interest.

Honesty

- 28 The Working Group identified that the heading of this section of the Code did not match the description beneath it. This was a clear instance of the Council determining to tailor the requirement under the Nolan heading making this section of the Code more about interests than truthfulness which is the way it is expressed in the Nolan principles.
- 29 The Working Group gave consideration to whether the Code ought to contain a responsibility of truthfulness but overall determined that this was a matter which it would be very difficult for the Monitoring Officer or a Local Hearing Panel to make a determination about and that it had the potential to draw the Monitoring Officer and members through the Local Arrangements in particular into matters which were best left in the political arena.
- 30 The Working Group felt this was an area where the distinction drawn by the CSPL between the Nolan Principles as standards and a Code of Conduct had real merit. As a result the preamble to the Code of Conduct has been expanded to make it clear that the conduct of members should at all times be guided by the Nolan Principles including Honesty and not just in such a way as to avoid falling foul of the Code of Conduct.
- 31 In terms of interests a proposed change is made to the Code requiring Councillors to comply with the law relating to disclosable pecuniary interests (DPIs) which would make a failure to disclose a DPI a breach of the Code even if it was not something that the police would investigate as a criminal offence.
- 32 The Working Group considered whether to add any categories of interest which should be registered in addition to DPIs. However the Working Group noted that the section of the existing Code was very widely drawn and required a Councillor to resolve any conflicts in favour of the public interest. It was considered that the Code already required Councillors in particular circumstances to disclose interests other than DPIs and to refrain from taking part in debates and voting where that was necessary to ensure that conflicts involving those interests were resolved in the public interest. It was therefore decided that the Code of Conduct should remind Councillors of this wider responsibility.

Respect

- 33 The Working Group considered the wide definition of Respect already contains a requirement not to engage in harassment and bullying. However, the importance of this as an issue within the CSPL Report has led the Working Group to recommend that the Respect section is expanded to make specific reference to harassment and bullying including examples of what these may amount to.
- 34 The Working Group also noted the Protocol on Harassment Intimidation and Unacceptable Behaviour in Part 5 of the Constitution (see below) and felt that this still had value and should be referenced within the Code of Conduct.

Social Media

- 35 Social Media was another area where the CSPL Report went into some detail. The experience of the Monitoring Officer has been that social media use is not a significant issue in complaints in Lincolnshire. However the Working Group felt that social media was so easy of use and so public in its distribution that it introduced additional risks for Councillors in their use of it.
- 36 Therefore although the Working Group did not consider that the Code needed specific provisions to cover social media it would be prudent to include a paragraph reminding Councillors of this heightened risk. This is included in the draft amended Code of Conduct at Appendix B as a separate note rather than a change to the Respect section of the Code.

Interests, Gifts and Hospitality

- 37 The Working Group's consideration of Interests is set out in paragraphs 31 and 32 above.
- 38 Gifts and Hospitality is also referred to in paragraph 20 where it was noted that the Code of Conduct had been changed to incorporate compliance with the rules on Gifts and Hospitality.
- 39 The CSPL Report recommended that local authorities should be required to establish a register of gifts and hospitality with members required to record any gifts and hospitality, which had been received over a value of £50 or totalling £100 over a year from a single source.
- 40 Although it was not clearly incorporated into the Council's Code of Conduct the Working Group noted that there was already provision for declaring gifts and hospitality in the Councillor Involvement in Commercial Transactions section of Part 5 of the Constitution.
- 41 The Working Group felt that a separate document setting out the expectation of Councillors in dealing with Gifts and Hospitality should be produced and recommend that the document attached at Appendix C to this report be

adopted as part of Part 5 of the Constitution. It is this document that members would be required to comply with as part of the Code of Conduct.

42 This document:-

- Requires registration of offers of gifts and hospitality in excess of £50 or £100 in aggregate from the same source
- Requires the register to indicate whether the gift or hospitality was accepted or declined
- Provides for the register to be published on the Council's website
- Sets out guidance for Councillors in dealing with offers of gifts or hospitality

Local Arrangements

43 The Council adopted Local arrangements for dealing with standards complaints at the same time that it adopted its Code of Conduct. It has not been reviewed since. The current process (attached at Appendix D) is straightforward but has difficulties in its operation. In particular:-

- There is little on how to make a complaint and such issues as whether the identity of the complainant will be disclosed;
- There is very little detail about how a complaint might be screened on receipt. The only criterion is whether it engages the Code of Conduct
- The decision as to whether a complaint should proceed to an investigation requires consideration of the reputation of the Council rather than a more public interest-based test which the CSPL recommends
- There is no basis in the Local Arrangements themselves for informal resolution
- The formal stage requires the investigator to determine whether a breach of the Code has taken place rather than the Monitoring Officer

44 Attached at Appendix E is a revised set of Local Arrangements which is recommended by the Working Group. The yellow highlighted sections are sections which are common to the existing Local Arrangements and the new proposed Local Arrangements. The main differences can be summarised as follows:-

- Anonymous complaints and how identity will be dealt with are included (para 2.3);
- Introduction of a more detailed initial assessment stage with a number of criteria against which the Monitoring Officer can carry out an initial assessment of the complaint. This includes trivial and malicious complaints (paras 3.3 to 3.7 inclusive).

- Further drafting on when a member may be treated as acting in their capacity as a county councillor (para 3.4). This goes some way towards addressing comments by the CSPL and set out in Appendix A;
 - Inclusion of a number of actions the Monitoring Officer may take even where it is decided that further action should be taken (para 3.9);
 - Criteria against which a judgement may be made about whether a complaint will progress to an investigation (para 4.3). At present the only criterion is whether the behaviour complained about presents a serious risk to the reputation of the Council. The new criteria seek to balance this approach with comments from the CSPL that there should be a public interest test by referring to public perception of the Council and trust in the Council and local democracy as public interest matters;
 - Provision for informal resolution at a number of stages (paras 3.9 and 4.5)
 - More detail as to the process to be undergone in the event of a formal investigation and hearing which also deals with publication of the results (the Appendix to the Local Arrangements); and
 - Process for dealing with conflicts of interest as proposed by the Committee on Standards in Public Life (para 6.3).
- 45 The approach to sanctions is the same as in the existing process which involves the Local Hearing making recommendations to the Group Leaders as to how the matter should be dealt with unless it is so serious that the Local Hearing considers that a motion of censure should be proposed to the next meeting of the Council.
- 46 No specific provision is made for sanctions referred to by the CSPL such as removal of facilities or of the right to use the Council's buildings and the CSPL recognise that there is some doubt about the power of the Council to do that.
- 47 Other sanctions such as removal from committees or the Executive would be in the power of the Group Leaders and could be recommended to the Group Leaders by the Local Hearing

Part 5 of the Constitution

- 48 Part of the remit of the Working Group as set out by the Audit Committee was to review those sections of Part 5 of the Council's Constitution which relate to standards.
- 49 The Working Group considered that the following sections of Part 5 relate to standards and should therefore be reviewed
- Protocol on Officer/Member Relationships
 - Councillor Involvement in Commercial Transactions
 - Harassment Intimidation and Unacceptable Behaviour

- Planning Development Control Process

- 50 The Working Group felt that the Protocol on Officer/Member Relationships should remain as it is without only one minor clarification which amendment is shown in track changes in the revised Protocol at Appendix F.
- 51 The Protocol on Councillor Involvement in Commercial Transactions should also remain but the section on Gifts and Hospitality should be removed to be replaced by the Code of Conduct and the new free-standing Protocol on Gifts and Hospitality. This is reflected in an amended version of the Protocol attached at Appendix G.
- 52 The Harassment Intimidation and Unacceptable Behaviour document should also be retained. This Protocol is now referred to in the Code of Conduct to make clear the relationship between the Code of Conduct provisions relating to harassment and bullying and the Protocol. The Working Group saw the Protocol as serving two purposes. Firstly, to give further detail as to what is meant by the terms bullying and harassment and secondly to provide specific provisions and mechanisms for dealing with behaviours between officers and members which is separate from the Code of Conduct itself.
- 53 The Planning Development Control Process document should also be retained as identifying specific considerations to be taken into account by Councillors dealing with planning matters. Again an amendment has been made to provide clarification of a specific point which is shown as a tracked change at Appendix H. In addition this document has also been referred to in a note to the Code of Conduct to indicate that the Code is supplemented by the Planning Development Control Process in matters relating to planning.

Conclusion

- 54 The Working Group has considered the matters referred to it by the Audit Committee.
- 55 The evidence of complaints and of the Ethical Governance Audit shows that there is not a major issue in Lincolnshire relating to Councillor's behaviour, nor with the Code of Conduct itself. The Working Group has therefore taken a proportionate approach, preserving the structure of the existing arrangements but developing recommendations which provide additional assurance that the Code of Conduct and the Council's Local Arrangements in particular are fit for purpose should the position change.
- 56 The work of the Working Group began with the Committee on Standards in Public Life Report on Ethical Standards in Local Government. During the course of its work the Working Group has considered the relevant recommendations of the CSPL and at Appendix A is a Table showing how the Working Group in its deliberations has addressed each recommendation which is in the power of the Council to implement.

57 As a result of those deliberations the Working Group recommends to the Audit Committee that it in turn recommends to the County Council that it approve the following changes to the Council's Constitution

- The amendments to the Code of Conduct shown in red in Appendix B
- The inclusion in Part 5 of the Constitution of the Protocol on Gifts and Hospitality attached at Appendix C
- The replacement of the Local Arrangements set out in the Constitution with the Local Arrangements attached at Appendix E
- The amendments to the Protocol on Officer/Member Relationships shown in red in Appendix F
- The amendments to the Protocol on Councillor Involvement in Commercial Transactions shown in red in Appendix G
- The amendments to the Planning Development Control Process Document shown in red in Appendix H