

Open Report on behalf of Councillor Mrs S Rawlins, Chairman of Audit Committee

Report to:	County Council
Date:	11 December 2019
Subject:	Members' Code of Conduct

Summary:

The Report presents the recommendations of the Audit Committee concerning changes to Part 5 of the Council's Constitution relating to the members' Code of Conduct and standards more generally.

It reflects the results of the deliberations of a Code of Conduct Working Group established by the Audit Committee at its meeting on 25 March 2019.

Recommendation(s):

That the full Council approves the following changes to the Council's Constitution

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

1. 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 ("the CSPL Report") published in January 2019.

- 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
- 5 The results of the Working Group's deliberations are set out in detail in a Report which can be found in the Appendix to a Report considered by the Audit Committee on 18 November 2019. This Report is referred to in the Background Documents section of this Report. It sets out the Working Group's response to various recommendations of the Committee on Standards in Public Life and sets out its own recommendations for amendments to various documents forming part of Part 5 of the Council's Constitution including the Member Code of Conduct and the Local Arrangements for dealing with Standards Complaints. It is summarised in this Report.

National and Lincolnshire County Council Context

- 6 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.

- 7 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.
- 8 In January 2019 the Committee on Standards in Public Life issued the CSPL Report. That report considered the state of standards in local government. The CSPL Report 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.
- 9 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 which merited detailed investigation. 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. This 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.

Code of Conduct

- 10 The Working Group considered the Code of Conduct in some detail with regard to the CSPL Report and other examples of local authority codes, 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.
- 11 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 A with the changes shown as tracked. A commentary on these changes is given below.

Integrity

- 12 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

- 13 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.

Openness

- 14 The Working Group felt that this was the place to incorporate some provisions about confidentiality on which the Code is currently silent. 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.
- 15 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.
- 16 The revised Code therefore permits disclosures that are in turn permitted by law. It was recognised that this is a very general statement and will need interpretation in specific circumstances. It was felt therefore 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.

Honesty

- 17 The Working Group gave consideration to whether the Code ought to contain a responsibility of truthfulness to reflect the wording of the corresponding Nolan Principle 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.
- 18 However, 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 breaching the Code of Conduct.
- 19 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.

- 20 The Working Group considered whether to add any categories of interest which should be registered in addition to DPIs. However 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

- 21 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.
- 22 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

- 23 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.
- 24 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.

Interests, Gifts and Hospitality

- 25 The Working Group's consideration of Interests is set out in paragraphs 19 and 20 above. Gifts and Hospitality is also referred to in paragraph 12 where it was noted that the Code of Conduct had been changed to incorporate compliance with the rules on Gifts and Hospitality.
- 26 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.
- 27 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.

- 28 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 B 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. Work is ongoing to review the necessary forms and provide the link referred to in paragraph 3 of the document.

Local Arrangements

- 29 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 is straightforward but has difficulties in its operation. In particular:-

- There is little information 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

- 30 Attached at Appendix C 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;
- 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).

31 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.

Part 5 of the Constitution

32 Part of the remit of the Working Group as set out by the Audit Committee was to review those parts of Part 5 of the Council's Constitution which relate to standards. The Working Group considered that the following sections of Part 5 should be reviewed

- Protocol on Officer/Member Relationships
- Councillor Involvement in Commercial Transactions
- Harassment Intimidation and Unacceptable Behaviour
- Planning Development Control Process

33 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 D.

34 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 E.

35 The Harassment Intimidation and Unacceptable Behaviour document should also be retained unamended. 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.

- 36 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 F. 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

- 37 The Audit Committee considered the recommendations of the Working Group at its meeting on 18 November 2019 and adopted the recommendations as its own as a proportionate response to the findings and recommendations of the Committee on Standards in Public Life.

2. Legal Issues:

Equality Act 2010

- 38 Under section 149 of the Equality Act 2010, the Council must, in the exercise of its functions, have due regard to the need to:
- * Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
 - * Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
 - * Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 39 The relevant protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation
- 40 Having due regard to the need to advance equality of opportunity involves having due regard, in particular, to the need to:
- * Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
 - * Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
 - * Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low

- 41 The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities
- 42 Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to tackle prejudice, and promote understanding
- 43 Compliance with the duties in section 149 may involve treating some persons more favourably than others
- 44 The duty cannot be delegated and must be discharged by the decision-maker. To discharge the statutory duty the decision-maker must analyse all the relevant material with the specific statutory obligations in mind. If a risk of adverse impact is identified consideration must be given to measures to avoid that impact as part of the decision making process

There are not considered to be any direct Equality Act implications of the recommendations in this Report. The Code applies without consideration to protected characteristics.

Joint Strategic Needs Analysis (JSNA) and the Joint Health and Wellbeing Strategy (JHWS)

- 45 The Council must have regard to the Joint Strategic Needs Assessment (JSNA) and the Joint Health & Well Being Strategy (JHWS) in coming to a decision

There are no direct implications in relation to either the JSNA or the JHWS arising out of the Report

Crime and Disorder

- 46 Under section 17 of the Crime and Disorder Act 1998, the Council must exercise its various functions with due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment), the misuse of drugs, alcohol and other substances in its area and re-offending in its area

There are no direct crime and disorder implications arising out of the Report

3. Conclusion

- 47 The Report sets out recommendations of the Audit Committee as to amendments to the standards provisions of the Council's Constitution in the light of recommendations made by the Committee on Standards in Public Life.

4. Legal Comments:

Changes to the Council's Constitution are reserved to the full Council.

The decision to make the recommended changes is lawful and within the remit of the full Council.

5. Resource Comments:

Accepting the recommendations within this report, should have no direct impact on the Council's budgets.

6. Consultation

a) Has Local Member Been Consulted?

n/a

b) Has Executive Councillor Been Consulted?

n/a

c) Scrutiny Comments

The decision has not been considered by a Scrutiny Committee

d) Have Risks and Impact Analysis been carried out?

Yes

e) Risks and Impact Analysis

See the body of the Report

7. Appendices

These are listed below and attached at the back of the report	
Appendix A	Amendments to the Code of Conduct
Appendix B	Protocol on Gifts and Hospitality
Appendix C	Local Arrangements for dealing with standards complaints
Appendix D	Amendments to the Protocol on Officer/Member Relationships
Appendix E	Amendments to the Protocol on Councillor Involvement in Commercial Transactions
Appendix F	Amendments to the Planning Development Control Process Document

8. Background Papers

Document title	Where the document can be viewed
Committee on Standards in Public Life Report – January 2019	Chief Legal Officer
Report to Audit Committee 25 March 2019	Democratic Services
Report to Audit Committee 18 November 2019	Democratic Services

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