

**AUDIT COMMITTEE
29 SEPTEMBER 2021**

THE LOCAL GOVERNMENT ASSOCIATION MODEL CODE OF CONDUCT

SUMMARY REPORT

Purpose of the Report

1. To invite members to consider whether the Council should adopt a revised Code of Conduct based on the Local Government Association Model Councillor Code of Conduct in place of the current Members Code of Conduct, and if considered appropriate approve the recommendations set out in the report.

Summary

2. This report sets out details of the Local Government Association (LGA) Model Councillor Code of Conduct and provides some analysis against the current Code of Conduct of this Council. It proposes a suggested way forward to consult with members about the possible adoption of a revised Code of Conduct for this Council based on the LGA Model Councillor Code of Conduct but with some local modifications.

Recommendation

3. Members are asked to:
 - (a) note the information presented and to discuss and comment on the LGA Model Code of Conduct;
 - (b) to consider whether the revised Code of Conduct in the form as set out at **Appendix 1**, which is based on the LGA Model Councillor Code but with some local changes, is in principle appropriate to adopt and should be subject to further consultation;
 - (c) to approve the proposed consultation plan;
 - (d) note that any changes to the Code of Conduct will need to be approved by Council and to agree the proposed consultation prior to the matter being considered by Council.

Reason

4. The reasons for the recommendations are:
 - (a) That reconsideration of the Members Code of Conduct will assist members to better understand the provisions of the code of conduct and to comply with the expectations.
 - (b) That it will assist in the development of an updated and refreshed Code of Conduct.

- (c) To help in promoting the good conduct of members in the council and the parish councils.

Luke Swinhoe
Assistant Director, Law and Governance
Monitoring officer

Background Papers

Committee on Standards in Public Life – Report on Local Government Ethical Standards, January 2019. [Local Government Ethical Standards January 2019 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/782212/standards-report-jan-2019.pdf)

Local Government Association Model Councillor Code of Conduct 2020 [Local Government Association Model Councillor Code of Conduct 2020](https://www.local.gov.uk/publications/2020-01-01/association-model-councillor-code-of-conduct-2020)

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S17 Crime and Disorder	There are no specific issues which relate to crime and disorder
Health and Well Being	There is no specific health and wellbeing impact
Carbon Impact and Climate Change	There is no specific carbon impact
Diversity	There is no specific diversity impact
Wards Affected	All wards are affected equally
Groups Affected	All groups are affected equally
Budget and Policy Framework	Any changes to the Member Code of Conduct will need to be agreed by Council and the Constitution amended.
Key Decision	This is not an executive decision
Urgent Decision	This is not an urgent decision
Council Plan	There is no specific relevance to the strategy beyond a reflection on the Council's ethical governance arrangements
Efficiency	There is no specific efficiency impact
Impact on Looked After Children and Care Leavers	This report has no impact on Looked After Children or Care Leavers

MAIN REPORT

Background

5. In January 2019 the Committee on Standards in Public Life (CSPL) published a report following a review of [Local Government Ethical Standards](#) including a number of best practice recommendations. One of the recommendations was that the Local Government Association (LGA) should produce an updated member code of conduct. After a period of work and consultation the LGA published the Model Councillor Code of Conduct on the 23rd December 2020.
6. The LGA Model Councillor Code of Conduct was the product of a significant independent piece of work that was commissioned by the LGA. The LGA hopes that the Model Code will be helpful to local authorities in the area of ethical standards and enhance a more consistent approach nationally.
7. So far, we have not yet formed a local view about adopting the LGA Model Code, but it is helpful to see how other Councils have reacted. The move to adopt is developing and it is important for this Council to have a considered view about the LGA Model Code of Conduct.
8. There are some variations of approach and not all Councils are looking to adopt the LGA Model Code of Conduct. So far approximately a third of councils have adopted the LGA Code of Conduct nationally. In our region, the other Tees Valley Councils are moving to adopt the LGA Model Code of Conduct (Middlesbrough and Stockton have adopted it and Redcar and Hartlepool are in the process of doing so).

LGA Model Councillor Code of Conduct

9. The LGA Model Code is available from the LGA website [Local Government Association Model Councillor Code of Conduct 2020](#)
10. The Model Code covers:
 - Joint statement
 - Introduction
 - Definitions
 - Purpose of the Code of Conduct
 - General principles of councillor conduct
 - Application of the Code of Conduct
 - Standards of councillor conduct
 - General Conduct: Respect; Bullying, harassment and discrimination; Impartiality of officers of the council; Confidentiality and access to information; Disrepute; Use of position; Use of local authority resources and facilities; Complying with the Code of Conduct; Protecting your reputation and the reputation of the local authority; Interests; Gifts and hospitality
 - Appendix A: The Seven Principles of Public Life
 - Appendix B: Registering Interests
 - Appendix C: the Committee on Standards in Public Life.

11. The Model Code is written in the first person, eg. ‘I treat other councillors and members of the public with respect’ and also has explanatory text which is written as if addressed to the councillor, eg ‘You should not...’.

Current Darlington Code of Conduct

12. The last major revision concerning member standards was a result of the Localism Act 2011. Amongst other things this legislation scrapped the Standards Board for England (which provided guidance and strategic regulation to local authorities on member standards) and the requirement for councils to have standards committees. The approach to the codes of conduct also changed, while the National Code of Conduct ceased to apply, councils were required to adopt their own code of conduct which had to include, as a minimum, provisions about member interests, the other content being a matter of local choice. Like many other Council we chose to keep the general provisions of the National Code of Conduct and add to them the changes being made to member interests by the Localism Act.
13. Our Code of Conduct remained largely based on the 2007 National model code of conduct with the amendments about member interests required by the Localism Act 2011. Since 2012 only very limited updates have been made to our Code of Conduct. The recent review and work undertaken by the LGA is a helpful way of giving an opportunity to review and update our Code of Conduct.
14. The Councils current Code of Conduct is available from the website [DARLINGTON BOROUGH COUNCIL’S](#)

Comparative analysis of the LGA Model Councillor Code of Conduct

15. Using the LGA Model Code of Conduct as template, comparative analysis about the provisions of the LGA Model Code of Conduct with the Councils own Code of Conduct is set out below:

Provision	LGA Model Code	Darlington Borough Council Code	Comments
PRELIMINARY PROVISIONS			
Joint statement	Information about the role of elected members and expectations of behaviour		Suggest delete as DBC introduction is sufficient
Introduction (DBC)		Provides background info re the Code of Conduct, its adoption, member undertaking to comply, Nolan principles, complaints, members personal responsibility, gender applicability and subsequent legal changes having precedence.	Suggest retain this version with following amends: Delete para 2 -as this is picked up in the LGA Application of the Code para. Replace para 2 with a reference to the 2020 LGA Model Code Delete reference to ‘the Appendix’ as this is

			picked up in the General Principles section.
Introduction (LGA)	About the LGA model Code		Suggest delete (reference made in DBC Introduction)
Definitions	Defines Councillor and Co-opted member		Suggest delete (not add anything).
Purpose of the Code of Conduct	General statement.		Include (omitting reference to the LGA)
General Principles	References the Nolan Principles and nine general principles specifically for the role of Councillor that supplement the Nolan Principles.	The Nolan principles are Referenced in para 3 of the DBC Introduction	Suggest include Reference Appx A (the full Nolan principles) Include para re status of principles (ie to aid understanding and interpretation – but not directly enforceable).
Application of the Code	Reference to misuse of your position The Model Code indicates that it applies to all forms of communication and interaction. Examples included.	Dealt with by Para 2 of the Code Includes reference to acting or claiming to act as a representative of the Council [no examples included]	Suggest include. Some clarification made to LGA Code, including acting/claiming to act as a cllr and deleting reference to misuse (unnecessary given the subsequent specific paras of the code).
Support and Advice <i>(new heading)</i>	Set out in the above para (Application of the Code) Note – no reference is made to Chief Finance Officer or other statutory officers	Referenced in Para 7 of the Code	Suggest include but move this from the Application section and create a new heading – as per this section. Parish Cllrs wording deleted – but to be used instead by parish councils
STANDARDS OF CONDUCT			

<p>1. Respect</p>	<p>Same concept as the DBC Code but with more clarity about to whom the duty applies.</p> <p>Explanatory text clarifies the right to express differing views and the limits in a democracy. Reference to social media and the conduct of others.</p>	<p>Dealt with para 3(1) (and in more specific areas in 3(2).)</p> <p>Unlike the LGA version the text is unamplified.</p>	<p>Suggest include.</p>
<p>2. Bullying, harassment and discrimination</p>	<p>The Model Code includes harassment.</p> <p>Explanatory sets out the definition of bullying. Clarification about what is meant by harassment and discrimination.</p>	<p>Bullying is in para 3 (2) (b).</p> <p>Para 3 (2) (a) deals with the anti-discrimination (this needs updating as the legislative reference has been superseded).</p> <p>No provision about harassment.</p> <p>There is no explanatory text.</p>	<p>Suggest include.</p>
<p>3. Impartiality of officers</p>	<p>The Model Code includes explanatory text.</p>	<p>This is covered para 3(2)(d) of the Code - similar wording.</p> <p>No explanatory text.</p>	<p>Suggest include.</p>
<p>4. Confidentiality and Access to Information</p>	<p>The Model Code includes similar provisions concerning the improper disclosure of confidential information and the improper denial of access to information that people are entitled to.</p> <p>A new provision deals with improperly using knowledge gained as a result of being a councillor for the self - advancement or of their friends, family members, employer or their business interests.</p> <p>Explanatory text is included</p>	<p>This is covered in the Code at sections 4 and 6(a)</p> <p>Although the provision dealing with the improper use of knowledge is not in the information sections of the Code, it would be covered by para(6)(a) which deals with a member improperly using their position to confer or secure an advantage (or disadvantage) for themselves or any person</p> <p>No explanatory text.</p>	<p>Suggest include.</p>

5. Disrepute	The Model Code is similar to the DBC Code Explanatory text is included	This is covered in the Code at section 5. No explanatory text.	Suggest include.
6. Use of position	The Model Code is similar to the DBC Code Explanatory text is included	This is in para 6(a) of the Code No explanatory text.	Suggest include.
7. Use of local authority resources and facilities	The Model Code is similar to the DBC Code Explanatory text is included	This is covered in paragraphs 6 (b) and (c). No explanatory text.	Suggest include.
8. Complying with the Code of Conduct	The Model Code includes a para aimed at preventing the intimidation of those involved in the administration of complaint investigations or proceedings. The requirement to undertake Code of Conduct training provided by the local authority is new. The requirements to cooperate with an investigation and/or determination finding are new. Explanatory text included	The wording of the DBC para on non- intimidation re complaint investigations is wider. The provisions concerning training and co-operation with any investigation and finding are not in the Code, but they would be helpful to include. No explanatory text	Suggest include. Expand the non-intimidation provision to include complainants and witnesses.
MEMBER INTERESTS			
9. Protecting your reputation and the reputation of the local authority	The layout of the Model Code differs from the DBC Code making direct comparative analysis more difficult.		There are some differences and omissions in the LGA Code which it is suggested we include (see below)
9.1	Paragraph is a general introduction about registration and disclosure of interests and some explanatory text.	The Code does not have a general paragraph about interests No explanatory test	Suggest include and that we follow the general Model Code approach.

	[The detail about interests set out in Appendix B]		
Appendix B Registering Interests	Deals with registration and also the definition of disclosable pecuniary interest and partner (set out in Table 1) and other registerable interests (set out in table 2) Deals with updating the register Deals with sensitive interests	Registration and updating of the register are in para 12 of the Code. The definition of pecuniary interests is in para 9 and non-pecuniary interests are in para 8 of the Code. The definition of partner is set out in para 9(2) of the Code Sensitive interests are in para 13 of the Code.	Suggest include
Appendix B Non-Participation in the case of Disclosable pecuniary interests Paras 4 & 5.	The LGA requires a member to declare, not participate and leave the room unless they have been granted a dispensation.	Under the Code [para 11(3)] a member with such an interest can remain to speak (if the public are entitled to do this) but must then leave the meeting and not participate further. Note -S.31(4) of the Localism Act requires a member with a disclosable pecuniary interest to leave and not participate unless granted a dispensation.	Suggest include.
Appendix B Disclosure of Other Registerable Interests Para 6.	The Model Code requires a member with other registerable interest (directly affecting wellbeing or financial interest) then they must declare, not participate and leave the room unless granted a dispensation. Where the public can speak then members can also do so before leaving.	The provisions in the Code are similar	Suggest include.
Appendix B Disclosure of non- registerable interests	This concerns interests that directly relates to the wellbeing or financial interest of the member,	The provisions in the Code are similar 8(1)(b) and 9(1)(b), with a 'relevant	Suggest include.

<p>Para 7.</p>	<p>relative or close associate. In such circumstances they must declare, not participate and leave the room unless granted a dispensation. Where the public can speak then members can also do so before leaving.</p>	<p>person' extension in 8(2)(b) and 9(2)(b).</p>	
<p>Appendix B Disclosure of non- registerable interests Paras 8 - 10.</p>	<p>This concerns interests that directly affect the wellbeing or financial interest of the member, relative or close associate or bodies included in other registerable interests.</p> <p>Under Para 9 test for determining how the interest should treated includes whether a reasonable member of the public with knowledge of the relevant facts would believe your view of the wider public interest would be affected</p> <p>In such circumstances participation is dealt with as under para 7.</p>	<p>Under the Code the test for whether well-being or the financial position is affected is whether it could be 'reasonably regarded' as doing so</p>	<p>Suggest include</p>
<p>Interests that do not prevent participation</p>	<p>Not in the Model Code</p>	<p>Para 11(6) includes some exceptions which permit participation even though potentially they may affect a member's well-being or financial position</p>	<p>Suggest include.</p>
<p>Members in Council Tax arrears</p>	<p>Not in the Model Code</p>	<p>The Notes after para 13 deals with Members with arrears of Council tax must make an arrears declaration and cannot vote on setting council tax</p>	<p>Suggest include.</p>
<p>Appendix B Table 1</p>	<p>Sets out the list of disclosable pecuniary interests</p> <p>This list is statutory deriving from the Relevant</p>	<p>This is set out in para 9(1) of the Code.</p>	<p>Suggest include.</p>

	Authorities (Disclosable Pecuniary Interests) Regulations 2012.		
Appendix B Table 2	Sets out the list of other registerable interests. Non statutory	This is set out in para 8(1) of the Code. The exception is unpaid directorships which is not included in the DBC list. It is sensible to do so.	Suggest include.
10. Gifts and hospitality	The general threshold for registration of gifts or hospitality with a value of at least £50. The Model Code includes provision about not accepting gifts or hospitality, irrespective of estimated value, which could give rise to real or substantive personal gain or a reasonable suspicion of influence. The Model Code requires the Registration of any significant gift or hospitality offered but refused.	Gifts and hospitality are covered in para 8(3) of the Code. The DBC financial threshold for registering a gift/hospitality is £25 which mirrors the threshold in the Officer Code of Conduct. There is no provision dealing with gifts and hospitality of any value (ie including below threshold) where there is a reasonable suspicion of personal gain of influence. There is no requirement in the Code to register refused gifts/hospitality	Suggest include, Consider amend the threshold from £50 to £25 in order to mirror the employee Code?
Appendix C Committee on Standards in Public Life – Best Practice Recommendations	The CSPL report on Local Government contained a number of recommended best practice actions for local authorities (as set out in Appendix C of the Model Code).	Note – In September 2020, the Audit Committee reviewed the best practice recommendations and noted the position of the Council, (most of the recommendations being complied with or being worked towards).	Suggest this is omitted

Consideration about whether to adopt or not

16. The first thing to mention is that there is no compulsion to adopt the Model Code of Conduct either in its entirety or at all.

Reasons in favour of adoption

17. Set out below are a number of the reasons in favour of adoption:

- (a) The Model Code of Conduct is the product of an extensive independent review informed by experienced external consultants and is helpful in presenting an up to date version of the code of conduct.
- (b) The format of the Model Code of Conduct is largely consistent with the model that has been used by this Council, with both general provisions relating to conduct and specific provisions relating to member interests.
- (c) While many of the provisions and concepts are similar to those in the Councils current Code of Conduct and will be familiar, the wording has been updated and may be easier to follow.
- (d) The LGA will be reviewing the Code of Conduct on a periodic basis. This may be helpful to the Council in aligning any future review that we do of our Code of Conduct to changes being recommended by the LGA.
- (e) The LGA will also produce periodic guidance to assist local authorities with the interpretation of the Model Code of Conduct. The guidance is likely to be more directly relevant if we have adopted the wording of the LGA Model Code of Conduct.
- (f) As it is not mandatory to adopt the LGA Model Code of Conduct, if we do adopt the Model Code we still retain the ability to make changes to the text that are considered appropriate.
- (g) The other Tees Valley Councils are moving to adopt the LGA Model Code of Conduct and it is likely to be beneficial for members and officers to work against the backdrop of aligned codes of conduct when dealing with regional and cross boundary issues.

Reasons not to adopt

18. Set out below are the reasons not to adopt the reasons not to make any changes.

- (a) nationally, not all Councils are adopting the LGA Model Code of Conduct and there is no requirement to do so.
- (b) the current Code of Conduct is operational and deals with all of the areas that are addressed by the LGA Model Code of Conduct.
- (c) aside of the work undertaken by the LGA, there is no pressing need to make changes to the Code of Conduct.

(d) additional work will be required to change to and roll out a revised code of conduct.

Suggested changes to the LGA Model Code of Conduct

19. While we can make amendments to the Model Code of Conduct, the more extensively it is changed the more that we will depart from the model LGA template and it will be more beneficial (ie national consistency/using LGA guidance) if departures from it are limited.
20. The suggested changes are those identified in the comments column of the table set out in paragraph 15 (above). The recommendation is that the Code that we adopt is the version set out in **Appendix 1** which includes these modifications as track changes to the LGA Model Code.

Concluding comments

21. The LGA Model Code of Conduct is well set out and reasonably straightforward to follow. It benefits from being the product of an up to date comprehensive review of this area. It is not perfect, no work of this nature is ever likely to be and there will always be scope for debating precise wording.
22. All things considered, with the local modifications, it is considered beneficial to adopt the LGA Model Code of Conduct.
23. It will give this Council a more up to date code of conduct in language that is hopefully easier to follow than the current version.
24. It is helpful to have the support of the LGA in this area generally and following adoption we will benefit from having aligned our Code of Conduct. As the LGA produces further guidance or recommended changes we will be better placed to consider and take this on board locally. Doing this is likely to be helpful in strengthening the place of ethical standards.
25. It will also mean that there is consistency of approach across the Tees Valley Councils.

Consultation Plan

26. If members of the Audit Committee are supportive in principle of the adoption of the LGA Councillor Code of Conduct, then it is suggested that an all member briefing session is convened to give all members the opportunity to consider the LGA Model Code and to receive views and comments.
27. This report will also be circulated by the Monitoring Officer to the Parish Councils and he will also attend the Local Association of Parish Councils to provide information and to seek views. The Borough Council is the responsible body for dealing with complaints about breaches of the Code of Conduct including those that arise from parish councils in the Darlington area. While parish councils adopt their own Code of Conduct, they have predominantly adopted the Code of Conduct used by the Borough Council. It will be suggested to parish councils that they also consider adopting the Code of Conduct that will be used by the Borough Council.
28. Following this, the final version will proceed to Council for further consideration and approval.

Legal Implications

29. It is a legal requirement under section 27(2) of the Localism Act 2011 for the Council to adopt a Code of Conduct dealing with the conduct expected of members of the Council.
30. Any changes to the Code of Conduct will need to be approved by a meeting of Council and as it comprises part of the Councils Constitution, the Constitution will need to be updated to reflect any changes made.

Financial Implications

31. No direct additional costs are likely to be occasioned by a decision to adopt the LGA Model Code of Conduct.