

COUNCIL
25 NOVEMBER 2021

THE CODE OF CONDUCT FOR MEMBERS

Responsible Cabinet Member -
Councillor Scott Durham, Resources Portfolio

Responsible Officer -
Luke Swinhoe
Assistant Director, Law and Governance
Monitoring Officer

SUMMARY REPORT

Purpose of the Report

1. To invite members to consider the adoption of 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.
3. A revised Code of Conduct for Members has been produced based on the LGA Model Councillor Code of Conduct, including some minor local modifications and this is attached at **Appendix 1**. The version at **Appendix 2** includes track changes to assist in the understanding of the changes that have been made. Further analysis of the current and proposed Code is set out in the table in paragraph 18.
4. The LGA Model Councillor Code of Conduct was considered by the Audit Committee on 29 September 2021 and Member briefing sessions were held on 1 and 3 November 2021. A session for parish council members was held on 2 November 2021. There has been broad support for the adoption of the LGA Code of Conduct (in the form as set out in Appendix 1).

Recommendation

5. Members are asked to:
 - (a) Note the information presented on the LGA Model Councillor Code of Conduct;

- (b) Approve the adoption of the revised Code of Conduct for Members as set out at Appendix 1 of the report, to take effect on **1 January 2022**.
- (c) To authorise the Monitoring Officer to update the Constitution to replace the current Code of Conduct for Members with the Code adopted as referenced in paragraph (b), above;
- (d) Note that all Members will need to review their register of interests and consider whether any amendments are needed to their register of interests as a result of the revised Code of Conduct for Members coming into force.
- (e) Note that following adoption by the Borough Council, Parish Councils in the Darlington area will also be invited to adopt the revised Code of Conduct for Members.

Reasons

6. The reasons for the recommendations are:
- (a) The adoption of an updated and revised Code of Conduct for Members, with modernised language and explanatory text, will assist the public and members to better understand the provisions of the Code of Conduct.
 - (b) To align the Council's Code of Conduct for Members to the LGA Model Councillor Code of Conduct.
 - (c) To help in promoting the good conduct of Members in the Council and the Parish Councils.
 - (d) To ensure that the Constitution is up to date.

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Background Papers

- (i) 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://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/404242/standards-report-2019.pdf)
- (ii) Local Government Association Model Councillor Code of Conduct 2020 [Local Government Association Model Councillor Code of Conduct 2020](https://www.local.gov.uk/media/1032226/Local-Government-Association-Model-Councillor-Code-of-Conduct-2020.pdf)

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| S17 Crime and Disorder | There are no specific issues which relate to crime and disorder |
| Health and Wellbeing | 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 | Changes to the Member Code of Conduct 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

7. 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 23 December 2020.
8. 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.
9. 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.
10. 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 either have or are moving to adopt the LGA Model Code of Conduct (Stockton, Middlesbrough and Hartlepool have now adopted it and Redcar is in the process of doing so).
11. It is also relevant that the National Association of Local Councils (which represents the interests of parish and town councils) is recommending to its members that they adopt the LGA Model Councillor Code of Conduct.

LGA Model Councillor Code of Conduct

12. The LGA Model Councillor Code is available from the LGA website [Local Government Association Model Councillor Code of Conduct 2020](#)
13. The Model Code covers:
 - (a) Joint statement;
 - (b) Introduction;
 - (c) Definitions;
 - (d) Purpose of the Code of Conduct;
 - (e) General principles of councillor conduct;
 - (f) Application of the Code of Conduct;
 - (g) Standards of councillor conduct;
 - (h) 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;
 - (i) Appendix A: The Seven Principles of Public Life;
 - (j) Appendix B: Registering Interests;
 - (k) Appendix C: The Committee on Standards in Public Life.
14. The Model Code is written in the first person, e.g. 'I treat other councillors and members of the public with respect' and has explanatory text, which is written as if addressed to the councillor, e.g 'You should not...'

Current Darlington Code of Conduct

15. 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 oversight 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 Councils we chose to keep the general provisions of the National Code of Conduct and add to them the changes required to member interests by the Localism Act.

16. Our Code of Conduct remained largely based on the 2007 National 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 work undertaken by the LGA is a helpful way of giving an opportunity to review and update our Code of Conduct.
17. The Council's current Code of Conduct is available from the website [DARLINGTON BOROUGH COUNCIL'S](#)

Comparative analysis of the LGA Model Councillor Code of Conduct

18. Using the LGA Model Code of Conduct as template, a comparative analysis about the provisions of the LGA Model Code of Conduct with the Council's own Code of Conduct is set out below:

| Provision | LGA Model Code | Darlington Borough Council Code | Comments |
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| 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 information about the Code of Conduct, its adoption, member undertakings to comply, Nolan principles, complaints, members' personal responsibility, gender applicability and subsequent legal changes having precedence. | Suggest retain this version with following amendments: 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 and local authority. | | 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 | The Nolan principles are referenced in para 3 of the DBC Introduction | Suggest include Reference Appx A (the full Nolan principles) |

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| | supplement the 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. |
| 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 | | | |
| 1. Respect | Same concept as the DBC Code but with more clarity about to whom the duty applies. Explanatory text clarifies the right to express differing views and the limits in a democracy. Reference to social media and the conduct of others. | Dealt with para 3(1) (and in more specific areas in 3(2).) Unlike the LGA version the text is unamplified. | Suggest include. |
| 2. Bullying, harassment and discrimination | The Model Code includes harassment. Explanatory sets out the definition of bullying. Clarification about what is meant by harassment and discrimination. | Bullying is in para 3 (2) (b). Para 3 (2) (a) deals with the anti-discrimination (this needs updating as the legislative reference has been superseded). No provision about harassment. There is no explanatory text. | Suggest include. |

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| 3. Impartiality of officers | The Model Code includes explanatory text. | This is covered para 3(2)(d) of the Code - similar wording. No explanatory text. | Suggest include. |
| 4. Confidentiality and Access to Information | 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. 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. Explanatory text is included | This is covered in the Code at sections 4 and 6(a) 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 No explanatory text. | Suggest include. |
| 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 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. |

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| | <p>The requirements to cooperate with an investigation and/or determination finding are new.</p> <p>Explanatory text included</p> | | |
| 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 | <p>Paragraph is a general introduction about registration and disclosure of interests and some explanatory text.</p> <p>[The detail about interests set out in Appendix B]</p> | <p>The Code does not have a general paragraph about interests</p> <p>No explanatory text</p> | Suggest include and that we follow the general Model Code approach. |
| Appendix B Registering Interests | <p>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)</p> <p>Deals with updating the register</p> <p>Deals with sensitive interests</p> | <p>Registration and updating of the register are in para 12 of the Code.</p> <p>The definition of pecuniary interests is in para 9 and non-pecuniary interests are in para 8 of the Code.</p> <p>The definition of partner is set out in para 9(2) of the Code</p> <p>Sensitive interests are in para 13 of the Code.</p> | 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. | <p>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.</p> <p>Note -S.31(4) of the Localism Act requires a</p> | Suggest include. |

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| | | member with a disclosable pecuniary interest to leave and not participate unless granted a dispensation. | |
| 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 Para 7. | This concerns interests that directly relates to the wellbeing or financial interest of the member, 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. | The provisions in the Code are similar 8(1)(b) and 9(1)(b), with a 'relevant person' extension in 8(2)(b) and 9(2)(b). | Suggest include. |
| Appendix B Disclosure of non- registerable interests Paras 8 - 10. | 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. 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 | 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 | Suggest include |

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| | In such circumstances participation is dealt with as under para 7. | | |
| Interests that do not prevent participation | Not in the Model Code | Para 11(6) includes some exceptions which permit participation even though potentially they may affect a member's well-being or financial position | Suggest include. |
| Members in Council Tax arrears | Not in the Model Code | 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 | Suggest include. |
| Appendix B Table 1 | Sets out the list of disclosable pecuniary interests This list is statutory deriving from the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012. | This is set out in para 9(1) of the Code. | Suggest include. |
| 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 | 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. | Suggest include. |

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| | significant gift or hospitality offered but refused. | There is no requirement in the Code to register refused gifts/hospitality | |
| 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 |

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 (i.e. national consistency/using LGA guidance) if departures from it are limited.
20. The suggested changes, which are limited, are those identified in the comments column of the table set out in paragraph 18 (above). The recommendation is that the Code that we adopt is the version set out in Appendix 1. Set out at Appendix 2 is the LGA Model Code but with track changes to highlight to modifications.

Consideration about whether to adopt or not

21. 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

22. Set out below are a number of 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

23. Set out below are the reasons not to adopt:

- (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.

Additional things required prior to and following from adoption

- 24. Members will need to review their register of interests to see if any changes are needed as a result of adopting the revised code of conduct. The main issue that could arise is the new requirement arising from the LGA Model Code of Conduct for members to disclose details of directorships to which they have been appointed on their register of interests.
- 25. Training will also be provided for all members on the new Code of Conduct in December and early in the new year. Separate sessions will also be run for Parish Councils (who are being invited to adopt the revised Code of Conduct).

Concluding comments

- 26. 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 independent 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.
- 27. All things considered, with the local modifications, it is considered beneficial to adopt the LGA Model Code of Conduct.
- 28. 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.

29. 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.
30. It will also mean that there is consistency of approach across the Tees Valley Councils.

Consultation and consideration

31. A report on the LGA Model Code of Conduct was considered by the Audit Committee on 29 September 2021. The members of the Audit Committee were supportive in principle of the adoption of the LGA Councillor Code of Conduct (with the local modifications) and agreed that all member briefing session should be held to give all members the opportunity to consider the LGA Model Code and for views and comments to be received. Briefing sessions were held on 1 and 3 November 2021.
32. The 29 September Audit Committee report was also circulated Parish Councils and a briefing session was held on 3 November 2021 for Members of Parish Councils. [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. Should the Borough Council agree to adopt the LGA Code it will be suggested to parish councils that they also consider adopting the Code of Conduct that is used by the Borough Council.]
33. The LGA Model Code of Conduct (with the local modifications) was well received and there was broad consensus that to adopt this in place of the current Code of Conduct.

Legal Implications

34. 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.
35. Any changes to the Code of Conduct must be approved by a meeting of Council and as it comprises part of the Council's Constitution, the Constitution will need to be updated to reflect any changes made.
36. When a Code of Conduct is revised or replaced sufficient publicity must be undertaken to bring the changes to the attention to persons living in the area (Section 28(12) Localism Act 2011).

Financial Implications

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