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TO	Council
DATE	30 July 2020
EXECUTIVE MEMBER	Portfolio Holder for Corporate Direction and Governance

KEY DECISION REQUIRED	No
WARDS AFFECTED	(All Wards);

SUBJECT	Revised Member Code of Conduct, and Member / Officer Protocol
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RECOMMENDATIONS
To adopt the revised Member Code of Conduct, and Member / Officer Protocol; and consequentially amend the constitution of the Council accordingly.
EXECUTIVE SUMMARY
<p>This report advises the Council on the outcome of the review by the Committee on Standards in Public Life (CSPL) on Local Government ethical standards, which set out a list of nine best practice recommendations which Local Authorities should consider as a benchmark of good ethical practice and implement. These are:</p> <ul style="list-style-type: none"> • Defining Bullying/harassment and examples of such behaviours • Consideration of the application of the Code of Conduct to Social Media • Introduction of a requirement to declare gifts and hospitality over £25 • Limiting the acceptance of Gifts and Hospitality with regard to Planning Committee • Investigations and Safeguards • Filtering of complaints • Sanctions • Supporting Officers • Leadership and Culture

These nine recommendations are explained below at paragraph 6 and have been incorporated into a revised draft Code of Conduct at Annexe 1.

This decision must be made by the Full Council.

STATUTORY POWERS

The Council and individual Members are required to promote and maintain high standards of ethical behaviour as is required under section 27 of the Localism Act 2011 (“the Act”). Under section 28 of the Act, the Council must have in place “arrangements” under which allegations that a member or co-opted member of the Council, or of a Committee of Sub-Committee of the Council, has failed to comply with Code of Conduct can be investigated and decisions made on such allegations. These arrangements are in place, but require a review and update.

BACKGROUND

1. The CSPL published its report on Local Government Ethical Standards on 30 January 2019. The report can be accessed here: <https://www.gov.uk/government/publications/local-government-ethical-standards-report>. The report proposes a range of measures which it mainly recommends to Government but also to the Local Authorities, including Parish Councils.
2. The report reinforces the high standards of conduct required in local government to protect the integrity of decision-making, maintain public confidence and safeguard local democracy.
3. The report concludes that there is no need to return to a centralised body to govern and adjudicate on standards and that Local Authorities should retain ultimate responsibility for implementing and applying the [seven principles of public life \(Nolan Principles\)](#) in Local Government. These are:
 - Selflessness
 - Integrity
 - Objectivity
 - Accountability
 - Openness
 - Honesty
 - Leadership
4. In order to become mandatory, some of the recommendations of the CSPL’s report require changes to primary legislation, secondary legislation and the Local Government Transparency Code, however, a local authority may choose to voluntarily adopt the recommendations.
5. The report sets out a list of Best Practice recommendations which Local Authorities should consider as a benchmark of good ethical practice and implement. Those recommendations align with the outcomes of the training sessions provided for all Members by the Local Government Association on Member / Officer relations, held in October 2019.

KEY INFORMATION

6. The report highlights that areas such as gifts and hospitality, social media use, and bullying and harassment have all increased but are not regularly reflected in the codes of conduct recommended by the Government and the Local Government Association.

- i. **Bullying/ harassment:** In particular, codes do not have specific behaviours that would amount to bullying. There is no statutory definition of bullying but the CSPL's report refers to a definition used by ACAS (Advisory, Conciliation and Arbitration Service), as follows:

“offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient”

Harassment is defined in the [Equality Act 2010](#). Substantial emphasis of these matters have been drafted, based on good practice at other Councils.

- ii. **Social Media:** The report states that, at the moment, codes of conduct can only apply when Councillors are acting in their capacity as a Councillor. The report recognises how the use of social media presents a challenge in determining whether a code of conduct applies to instances of behaviour. One of the recommendations is that Councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. This will require a change in legislation to permit local authorities to presume so when deciding upon code of conduct breaches.
- iii. **Gifts and hospitality:** The CSPL's report refers to gift value of £50 to £100. The report highlights that there are three broad principles surrounding gifts and hospitality that should guide whether an individual should accept gifts or hospitality, namely purpose, proportionality, and avoiding conflicts of interest to safeguard the principle of integrity.

The Council's code does not currently include any reference to the declaration of gifts and hospitality, however The Local Authorities (Model Code of Conduct) (England) Order 2001 requires that:

“a Member must, within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's Monitoring Officer of the existence and nature of that gift or hospitality”.

The Monitoring Officer therefore suggests that the Code should be updated to explicitly require compliance with its protocol on gifts, benefits and hospitality.

- iv. **Planning and gifts and Hospitality:** The report goes on to state that as part of their review the evidence received suggests that the acceptance of gifts and hospitality is of most concern when it comes to planning. “Planning is an area of decision-making where a small number of councillors can have a significant impact on the financial interests of specific individuals or firms. Councillors involved in planning decisions should generally therefore not accept over-frequent or over-generous hospitality and should always ensure that acceptance of such hospitality does not constitute a conflict of interest.” This would be enabled by compliance with iii) above.

- v. **Investigations and Safeguards:** The report recognises that there has to be an effective, fair, impartial and transparent procedure, in which Councillors and the public can have confidence. The report considers the role of the Independent Person (IP) and how this role could be strengthened and clarified. The review recommends that the views of the IP are included in any investigation report. The Monitoring Officer and investigating officers practice is to include the IP's comments in decision letters or reports. IPs are currently invited to the Standards Committee and would be invited to hearings if there were a hearing. IPs' views are integral to investigation reports and decision letters in the Council and this could be expressly stated in the Code of Conduct.
- vi. **Filtering of complaints:** The report states that the focus should remain on individual local authorities maintaining high standards in their own councils. This should include a filtering mechanism to ensure only allegations of real merit are investigated and the use of serious sanctions should remain rare.
- vii. **Sanctions:** The report states that the current sanctions available to local authorities are insufficient and that a lack of robust sanctions damage public confidence in the standards system and that there is no means of addressing serious or repeated misconduct. The report recommends that local authorities should be given the power to suspend councillors without allowances for up to six months and any Councillors who is suspended should be given the right to appeal to the Local Government Ombudsman. This change will require legislation.
- viii. **Supporting Officers:** The report highlights the challenging and broad role of the Monitoring Officer as well as the practical tensions and potential for conflicts of interest.
- ix. **Leadership and culture:** The report states that an ethical culture requires leadership from a range of individuals and groups: an authority's Chief Executive, political group leader and the chair of the Council. Maintaining an ethical culture day to day relies on an impartial, objective Monitoring Officer who is supported by the Chief Executive and Councillors. Although rules and guidance are necessary, it is leadership and culture which has the most impact on the standing of the Council's ethical standard. The Monitoring Officer notes and supports the best practice recommendation for senior officers to meet regularly with political group leaders and whips to discuss standards issues. The Monitoring Officer has delivered mandatory training for Councillors in relation to the code of conduct.

LEGAL IMPLICATIONS

- 7. There are no additional legal implications further to the requirements of the Localism Act 2011, as set out in the 'Statutory Powers' part of this report.

FINANCIAL IMPLICATIONS

- 8. There are no financial implications.

EQUALITIES IMPLICATIONS

9. The recommendation to include a definition of harassment within the Code of Conduct strengthens the Council's ability to protect against harassment, as defined in the [Equality Act 2010](#).

COMMUNICATION IMPLICATIONS

10. If adopted, an updated Code of Conduct would be republished on the Council's website. Supporting guidance for Members on interpreting the updated Code of Conduct should also be considered.

CONSULTATION

11. On 29 January 2018 CSPL launched a consultation on Local Government Ethical Standards. On 15 March Committee Members considered the terms of reference for the review. The terms of reference for the review were to examine the structures, processes and practices in local government in England for:

- maintaining codes of conduct for local councillors
- investigating alleged breaches fairly and with due process
- enforcing codes and imposing sanctions for misconduct
- declaring interests and managing conflicts of interest; and
- whistleblowing

And to:

- assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government
 - make any recommendations for how they can be improved
 - note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation
12. The Governance Task Group were consulted in the preparation of the revised Code of Conduct and Member / Officer Protocol as part of its Work Programme, in December 2019, and in February and March 2020.

POLICY FRAMEWORK

13. The Council's Code of Conduct does not currently include an explicit requirement for Members to comply with its other corporate policies and guidance (e.g. the Member ICT Policy / Communications Protocol). It is therefore recommended that an updated Code of Conduct should include such a requirement as a means of enforcing those policies.

BACKGROUND PAPERS

1. [‘Local Government Ethical Standards’](#), report of the Committee on Standards in Public Life (30th January 2019).