

East Herts Council Report

Audit and Governance Committee

Date of Meeting: 16 March 2021

Report by: Head of Legal and Democratic Services

Report title: Local Government Association Model Code of Conduct for Members

Ward(s) affected: All

Summary

- The report provides an update on the Local Government Association ('LGA') Model Councillor Code of Conduct that was last before the Audit & Governance Committee on 17th November 2020.
- It was agreed at that meeting that if a response to the Committee on Standards in Public Life's ('CSPL') 26 recommendations on ethical standards in local government, and by association, the Model Code of Conduct was not forthcoming from Central Government in the next six months, the current approach would be reviewed.
- The latest version of the Model Councillor Code of Conduct (herein 'the Model Code') was released by the LGA on 19th January 2021, and so it is appropriate that it be further considered at this time.

RECOMMENDATIONS FOR AUDIT AND GOVERNANCE COMMITTEE, that:

- (a) The Audit and Governance Committee recommends to Council the replacement of the Members' Code of Conduct as contained at Part 5a of the Council's Constitution with the LGA Model Councillor Code of Conduct (presented at Appendix 1 of this report) subject to Appendix C of the Model Code of Conduct being replaced with the text contained in Appendix 2 of this report, and**
- (b) That the Audit and Governance Committee recommends to Council that the replacement Code of Conduct be adopted with immediate effect.**

1.0 Proposal(s)

- 1.1 It is contained within the terms of reference of the Audit and Governance Committee that the Committee will advise the Council on the adoption or revision of the Members' Code of Conduct¹.
- 1.2 Pursuant to this, and it considering it prudent to do so, it is proposed that the Audit & Governance Committee recommend to Council that the LGA Model Code replaces the existing Members' Code of Conduct.

2.0 Background

- 2.1 It is believed that the East Herts Council Members' Code of Conduct was left largely unchanged when the Constitution's last major revision was adopted by Council on 16th May 2018. It is, however, the opinion of the Monitoring Officer that it is in need of review and updating.
- 2.2 Members may recall that the Committee in Standards in Public

¹ Part 3B, para 5.6.3 (x) of the Constitution

Life ('CSPL') recently published a report into local government ethical standards. This had 26 recommendations and 15 Best Practice recommendations, as first reported to the Audit and Governance Committee at its meeting of 17th November 2020.

2.3 Two of the recommendations of specific relevance to this report were:

- The Local Government Association should create an updated Model Code of Conduct, in consultation with representative bodies of councillors and officers of all tiers of local government; and
- Best Practice Recommendation 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.

2.4 As previously reported to the Committee, the LGA started a national consultation on a new model Code that ran from 8th June to 17th August 2020. Members were invited to participate in the consultation through the Member Information Bulletin, with reminders sent via e-mail in early August 2020.

2.5 A number of consultation events took place with the LGA online and these were attended by Members and Officers alike. A number of Members took the opportunity to respond to the consultation before it closed, with the LGA preparing a draft version for approval by the LGA Board on 3rd December.

2.6 Three updated, albeit very similar, versions have now been produced by the LGA. The most recent being 19th January 2021 attached as Appendix 1.

2.7 Were the Audit & Governance Committee minded to recommend to Council the adoption of the new Code of Conduct; and Council followed that recommendation and adopted it, it would be the Monitoring Officer's intention to

gauge what interest there was amongst the local parish and town councils to likewise adopt the LGA Model Code of Conduct.

3.0 Reason(s)

- 3.1 To ensure good governance within the Council that is reflective of a national governance model.
- 3.2 The LGA model has been produced on the recommendation of CSPL; however it is not mandatory that we, or any other local authority, adopt it.
- 3.3 If the Council decided to retain its own current version, it is the Monitoring Officer's view that given the time that has elapsed since drafting it, it would still need to review its Code and to start doing this annually, which would involve further consideration by officers and Members.

4.0 Options

- 4.1 As referred to in paragraph 3.2 above, it is open to the Council to either adopt the Model Code of Conduct or not. Points in favour and against doing so are set out below;
- 4.2 Points in favour of adopting the Code:
 - The LGA have produced a model Code of Conduct which has been prepared following national consultation;
 - It covers most of the elements that one would expect within the Code and goes beyond most basic models and the Council may adopt it as a whole or in part (as indeed the recommendation is to substitute the wording with Appendix C to the Model Code with the council's own wording);
 - It provides short guidance below each obligation under the main provisions of the Code – which should assist understanding;

- The LGA have stated that they will keep it under review so that it remains fit for purpose (thereby meeting the CSPL Best Practice recommendation 15) which would enable to Council's Code to remain fit-for-purpose should the Council update its Code in the future in line with the LGA's revisions;
- The LGA are commissioning more detailed Guidance which should be available on or about April 2021;
- Training can be commissioned for new District Councillors (and across the district for local councils) so that this ties into the new municipal year;
- East Herts Council would not have to undertake its own specific work on reviewing its Code at this stage, and given the Best Practice Recommendation 15, this would be yearly. This would amount to an almost ongoing consultation on changes.

4.3 Points against adoption of the Code:

- Three versions of the model code have been produced by the LGA already since December 2020. There are minor differences, however there has been no formal explanation provided as to why these changes have been made and this creates uncertainty;
- It includes the CSPL's Best Practice recommendations Appendix C. They are not, however, referenced elsewhere in the LGA code and are not enforceable against an individual Councillor. If Members are content with the principle of adoption then these can be corrected by removal as part of the recommendation outlined in recommendation (a).
- It does not include information on how a dispensation is granted to Councillors or by whom. If Members are content with the principle of adoption, then these can be corrected as part of the recommendation outlined in recommendation (a) by replacing Appendix C of the Model Code with a replacement East Herts Appendix C – which would cover who grants the dispensation and the statutory grounds. The proposed replacement Appendix C for the code is attached

to this report at Appendix 2;

- 4.4 On balance, whilst the January 2021 LGA version of the Model Code could, as with any document, be further improved, as part of a package with potential Guidance and annual review, it is preferable to undertaking our own bespoke approach on the matter. It offers an opportunity to reach out to local parish and town councils more effectively and give them greater and more consistent support through a national model.

5.0 Risks

- 5.1 Were Council to decide against adoption of the Model Code, this could present the risk of being out-of-step with national best practice and thus compromising the council's ability to demonstrate the highest standards among councillors if challenged. There is no indication currently of what level of take up there is likely to be, however it is understood anecdotally that the majority of Hertfordshire Councils are looking to adopt the Model Code.

6.0 Implications/Consultations

- 6.1 None

Community Safety

No

Data Protection

Yes – Part 4 of the Model Code deals with confidentiality and access to information. This places an obligation on Members not disclose information in certain circumstance, and corrects the lack of any such obligations in the current code.

Equalities

Yes – Part 2 of the Model Code deal with bullying, harassment and discrimination, with paragraph 2.3 placing an obligation on Members

to promote equalities and not discriminate unlawfully against any person.

Environmental Sustainability

No

Financial

No

Health and Safety

No

Human Resources

No

Human Rights

No

Legal

Yes – Under s.28 (12) of the Localism Act 2011, a relevant authority must publicise its adoption, revision or replacement of a code of conduct in such matter or as it considers is likely to bring the adoption, revision or replacement of the code of conduct to the attention of persons who live in its area.

Specific Wards

No

7.0 Background papers, appendices and other relevant material

- 7.1 Appendix 1 – LGA Model Councillor Code of Conduct 2020 (19th January 2021 version)
- 7.2 Appendix 2 – Suggested replacement Appendix C, which includes information regarding Dispensations.

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