

## APPENDIX 5 TO REPORT

### GBC MO COMMENTS ON MODEL CODE

#### **The Local Government Association Model Member Code of Conduct Consultation Draft**

##### **LGA introduction**

The LGA is providing this Model Member Code of Conduct as part of its work on supporting the sector to continue to aspire to high standards of leadership and performance.

The role of councillors is a vital part of our country's system of democracy. In voting for a local councillor, the public is imbuing that person and position with their trust. As such, it is important that councillors can be held accountable and adopt the behaviours and responsibilities associated with their role. The conduct of an individual councillor affects the reputation of all councillors. We want the role of councillor to be one that people aspire to and want to participate in. We want to attract individuals from a range of backgrounds and circumstances who understand the responsibility they take on and are motivated to make a positive difference to their local communities.

All councils are required to have a local Member Code of Conduct. This Model Member Code of Conduct has been developed in consultation with the sector and is offered as a template for councils to adopt in whole and/or with local amendments. The LGA will undertake an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation. The LGA can also offer support, training and mediation to member councils and councillors on the application of the Code.

##### **Introduction**

As a Councillor you represent local residents, work to develop better services and deliver local change. The public have high expectations of you and entrust you to represent everyone (in your ward/town/parish), taking decisions fairly, openly, transparently and with civility. You should also be treated with civility by members of the public, other councillors and council employees. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

MO - This introductory paragraph could be added to the Preamble to the Code at the very beginning as new 1.1 and the existing paragraph 1.1 moves to 1.2, and the numbering amended accordingly.

Query whether it makes the code too wordy and whether it really adds anything.

MO recommendation - Do not add this wording to CCC's Code of Conduct.

Annex 3.1 as the new Paragraph (A) in the Preamble to the Code. Query whether it makes the Code rather "wordy".

## Purpose

The purpose of this Code of Conduct is to assist councillors in modelling the behaviour that is expected of them, to provide a personal check and balance, and to set out the type of conduct against which appropriate action may be taken. It is also to protect yourself, the public, fellow councillors, council officers and the reputation of local government. It sets out the conduct expected of all Members and a minimum set of obligations relating to conduct. The overarching aim is to create and maintain public confidence in the role of Member and local government.

MO - This "Purpose" paragraph could be added to the begging of the Preamble to the Code. Annex 3.1 as the new Paragraph (B) in the Preamble to the Code. Again query whether it makes it too wordy. MO recommendation - do not add it to Code.

## Application of the Code

The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting]i in [public or in]ii your capacity as a Member or representative of your council, although you are expected to uphold high standards of conduct and show

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leadership at all times. The Code applies to all forms of Member communication, including written, verbal, non-verbal, electronic and social media, [including where you could be deemed to be representing your council or if there are potential implications for the council's reputation.]iii Model conduct and expectations is for guidance only, whereas the specific obligations set out instances where action will be taken.

MO – This is covered briefly in at paragraph 2. of the Code entitled "Scope" with the following wording:

"You must comply with this Code whenever you act in your capacity as a Member or Co-opted Member of the Authority."

MO recommendation - do not add this Application of the Code paragraph. This goes further than current legislation. A change in legislation is required to reflect this. Kent Secretaries commend adding in the That paragraph could be replaced with the full recommended text above upto the end of the square brackets once legislation is changed to reflect the wording in the square brackets.

## The seven principles of public life

Everyone in public office at all levels – Ministers, civil servants, Members, council officers – all who serve the public or deliver public services should uphold the seven principles of public lifeiv. This Code has been developed in line with these seven principles of public life, which are set out in appendix A.

MO – CCC's GBC's Code already includes these seven principles at Annex 1.

### **Model Member conduct**

In accordance with the public trust placed in me, on all occasions I will:

- act with integrity and honesty
- act lawfully
- treat all persons with civility; and
- lead by example and act in a way that secures public confidence in the office of Councillor

In undertaking my role, I will:

- impartially exercise my responsibilities in the interests of the local community
- not improperly seek to confer an advantage, or disadvantage, on any person
- avoid conflicts of interest
- exercise reasonable care and diligence; and
- ensure that public resources are used prudently and in the public interest

MO – This is a repeat of the seven principles and some aspects are ~~is covered~~ in the Code under the General Obligations heading at section paragraph 3. If they are to be added to the code itself as well it is suggested that the 3rd bullet point “treat all persons with civility; and” is not included. If it was included it is anticipated that there is a risk that there will be a significant increase in petty complaints due to the differing perception of “civility”. The Code previously included a requirement that members treat others with “respect” and this resulted in a significant increase in the number of petty complaints and in the workload for Monitoring Officers to deal with such complaints. It is difficult to see what “civility” adds in addition to the requirement to not bring the council into disrepute and the detailed definitions of bullying and harassment provided, in response to the Committee on Standards in Public Life report in January 2019 which made numerous best practice recommendations.

### **Specific obligations of general conduct**

This section sets out the minimum requirements of Member conduct. Guidance is included to help explain the reasons for the obligations and how they should be followed. These obligations must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media.

MO – This is superfluous and covered above. Paragraph 2 under the heading “Scope” in the Code ~~could be amended to include this wording so it reads:~~

~~“You must comply with this Code in all situations where you act or claim or give the impression that you are acting in your capacity as a Member of Co-opted Member of the Authority or in public, including representing your council on official business and when using social media.”~~

As a Councillor I commit to:

## Civility

1. Treating other councillors and members of the public with civility.
2. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.

Civility means politeness and courtesy in behaviour, speech, and in the written word. Debate and having different views are all part of a healthy democracy. As a councillor you can

express, challenge, criticise and disagree with views, ideas, opinions and policies in a civil manner. You should not subject individuals, groups of people or organisations to unreasonable or excessive personal attack.

In your contact with the public you should treat them courteously. Rude and offensive behaviour lowers the public's expectations and confidence in its elected representatives.

In return you have a right to expect courtesy from the public. If members of the public are being abusive, threatening or intimidatory you are entitled to close down any conversation in person or online, refer them to the council, any social media provider or if necessary, the police. This also applies to Members, where action could then be taken under the Member Code of Conduct.

~~MO – Kent Secretaries group recommend that It is suggested that the Civility wording is NOT added to there is no amendment to the Code of Conduct. that refers no reference to treating people with civility in the Code. If it was included it is anticipated that there is a risk that there will be a significant increase in petty complaints due to the differing perception of "civility". The Code previously included a requirement that members treat others with "respect" and this resulted in a significant increase in the number of petty complaints and in the workload for Monitoring Officers to deal with such complaints. It is difficult to see what "civility" adds in addition to the requirement to not bring the council into disrepute and the detailed definitions of bullying and harassment provided, in response to the Committee on Standards in Public Life report in January 2019 which made numerous best practice recommendations.~~

## Bullying and harassment

3. Not bullying or harassing any person.
- Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. The bullying might be a regular pattern of behaviour or a one-off incident, happen face-to-face, on social media, in emails or phone calls, happen in the workplace or at work social events and not always be obvious or noticed by others.v

The Equality Act 2010 defines harassment as "unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or

creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual". The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

~~MO – CCC's GBC's code includes bullying but not harassment. Therefore recommend accept Kent Secretaries suggested wording which includes examples from ACAS and the Protection from Harassment Act 1997.~~

~~—however a report will be presented to the Standards Committee on 30th July recommending amendments to the Code to include harassment and the definitions of bullying and harassment as these provide good examples to members of what sort of behaviour they should avoid.~~

### **Impartiality of officers of the council**

4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.

Officers work for the council as a whole and must be politically neutral (unless they are political assistants). They should not be coerced or persuaded to act in a way that would undermine their neutrality. Although you can question officers in order to understand, for example, their reasons for proposing to act in a particular way, or the content of a report that they have written, you must not try and force them to act differently, change their advice, or alter the content of that report, if doing so would prejudice their professional integrity.

~~MO - The numbered paragraph 4 is already included in CCC's GBC's Code t 3.2 c). - The explanation could be added underneath but query whether this level of detail is needed or makes the Code too wordy and not consistent with the current style of the Code. ?~~

### **Confidentiality and access to information**

5. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.

6. Not preventing anyone getting information that they are entitled to by law.

Local authorities must work openly and transparently, and their proceedings and printed materials are open to the public except in certain circumstances. You should work on this basis but there will be times when it is required by law that discussions, documents and other information relating to or held by the council are treated in a confidential manner. Examples include personal data relating to individuals or information relating to ongoing negotiations.

~~MO – the wording in paragraphs 5 and 6 is already included in CCC's GBC's Code at 3.2 d). The explanatory paragraph could be added but query whether that would make the Code too wordy and inconsistent with the style of the Code. ?~~

## Disrepute

7. Not bringing my role or council into disrepute.

Behaviour that is considered dishonest and/or deceitful can bring your council into disrepute. As a Member you have been entrusted to make decisions on behalf of your community and your actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. You should be aware that your actions might have an adverse impact on other councillors and/or your council.

MO – the wording in 7 already appears in CCC's GBC's Code at Annex 3.1, General Obligations paragraph 3 (2) (f). The explanatory paragraph could be added to provide clarity but query whether that would make the Code too wordy and inconsistent with style of Code.  
?

## Your position

8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.

Your position as a Member of the council provides you with certain opportunities, responsibilities and privileges. However, you should not take advantage of these opportunities to further private interests.

MO – the wording in 8 appears in CCC's GBC's Code (Annex 3.2, 3 (2) (g)). Again query whether the explanatory paragraph adds anything?

## Use of council resources and facilities

9. Not misusing council resources.

You may be provided with resources and facilities by the council to assist you in carrying out your duties as a councillor. Examples include office support, stationery and equipment such as phones, and computers and transport. These are given to you to help you carry out your role as a councillor more effectively, not to benefit you personally.

MO – the wording in 9 appears in CCC's GBC's Code (section Annex 3.1, 3 (1)). Again query the need for the explanatory paragraph.

## Interests

10. Registering and declaring my interests.

You need to register your interests so that the public, council employees and fellow Members know which of your interests might give rise to a conflict of interest. The register is



a document that can be consulted when (or before) an issue arises, and so allows others to know what interests you have, and whether they might give rise to a possible conflict of interest. The register also protects you. You are responsible for deciding whether or not you should declare an interest in a meeting, but it can be helpful for you to know early on if others think that a potential conflict might arise.

It is also important that the public know about any interest that might have to be declared by you or other Members, so that decision making is seen by the public as open and honest. This helps to ensure that public confidence in the integrity of local governance is maintained. Discuss the registering and declaration of interests with your Monitoring Officer/Town or Parish Clerk and more detail is set out in appendix B.

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MO – The issue of Interests is already well covered in CCC's GBC's Code in the Preamble (E) , the interpretation section, and at sections 4 and 5 in greater detail.

### Gifts and hospitality

11. Not accepting significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.
12. Registering with the Monitoring Officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.

You should exercise caution in accepting any gifts or hospitality which are (or which you reasonably believe to be) offered to you because you are a Member. However, you do not need to register gifts and hospitality which are not related to your role as a Member, such as Christmas gifts from your friends and family, or gifts which you do not accept. However, you may wish to notify your Monitoring Officer of any significant gifts you are offered but refuse which you think may have been offered to influence you.

MO – This is already covered in CCC's GBC's Code at paragraph 7 however, the amounts stated in 7(1) are higher referring to currently require an estimated value of £100 or more or a series of benefits/gifts with an estimated cumulative value of £100 or more, as recommended by Kent Secretaries. . The reduced limit of £50 for one gift/benefit or totalling £100 over a year from a single source was recommended by the Committee on Standards in Public Life report in 2019. The LGA's subsequent draft model code of conduct currently being consulted on reduces the threshold further to £25 for a single or series of gifts. In the interim the MO recommends that GBC's Code is amended to the thresholds of £50 and £100 to reflect the CSPL recommendations in January 2019. If following the LGA's consultation the model code does reduce the threshold to £25, this can be reflected in GBC's Code.

## **Breaches of the Code of Conduct**

Most councillors conduct themselves appropriately and in accordance with these standards. Members have both individual and collective responsibility to maintain these standards, support expected behaviour and challenge behaviour which falls below expectations.

Section 27 of the Localism Act 2011 requires relevant authorities to promote and maintain high standards of conduct by Members and co-opted Members of the authority. Each local authority must publish a code of conduct, and it must cover the registration of pecuniary interests, the role of an 'Independent Person' to advise on and investigate alleged breaches, and sanctions to be imposed on any councillors who breach the Code.

The 2011 Act also requires local authorities to have mechanisms in place to investigate allegations that a Member has not complied with the Code of Conduct, and arrangements under which decisions on allegation may be made.

Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence. Taking part in a meeting or voting, when prevented from doing so by a conflict caused by disclosable pecuniary interests, is also a criminal offence.

Political parties may have its own internal standards and resolution procedures in addition to the Member code of conduct that Members should be aware of.

Note – items in square brackets [x] refer to recommendations made by the Committee on Page 6 of 9

Standards in Public Life and may be part of a future Government consultation. This includes possible future sanctions and appeals processes.

MO – Most of this Breaches wording is ~~This is already briefly covered in the CCCGBC Code.~~

## **LGA Guidance and recommendations**

### **Internal resolution procedure**

Councils should have in place an internal resolution procedure to address conduct that is in breach of the Member Code of Conduct. The internal resolution process should make it clear how allegations of breaches of the Code of Conduct are to be handled, including the role of an Independent Person, the appeals process and can also include a local Standards Committee. The internal resolution procedure should be proportionate, allow for Members to appeal allegations and decisions, and allow for an escalating scale of intervention. The procedure should be voted on by the Council as a whole.

In the case of a non-criminal breach of the Code, the following escalating approach can be undertaken. If the breach is confirmed and of a serious nature, action can be automatically escalated.



1. An informal discussion with the Monitoring Officer or appropriate senior officer
2. An informal opportunity to speak with the affected party/ies
3. A written apology
4. Mediation
5. Peer support
6. Requirement to attend relevant training
7. Where of a serious nature, a bar on chairing advisory or special committees for up to two months
8. Where of a serious nature, a bar on attending committees for up to two months

Where serious misconduct affects an employee, a Member may be barred from contact with that individual; or if it relates to a specific responsibility of the council, barred from participating in decisions or information relating to that responsibility.

MO – There is no right of appeal in CCC's GBC's internal process for dealing with complaints regarding councillor's conduct as this is not required by legislation currently. Query whether

to add in the escalating approach which CCC GBC does utilise and is summarised in the process documents?

i CSPL recommend that "Section 27(2) of the Localism Act 2011 should be amended to state that a local authority's code of conduct applies to a Member when they claim to act, or give the impression they are acting, in their capacity as a Member or as a representative of the local authority".

ii CSPL recommend that "councillors should be presumed to be acting in an official capacity in their public conduct, including statements on publicly accessible social media. Section 27(2) of the Localism Act 2011 should be amended to permit local authorities to presume so when deciding upon code of conduct breaches." iii Subject to footnotes 1 and 2 above

iv See CSPL website for further details <https://www.gov.uk/government/news/the-principles-of-public-life-25-year> acas's definition of bullying