

**STROUD DISTRICT COUNCIL**  
**AUDIT AND STANDARDS COMMITTEE**

**AGENDA  
ITEM NO**

**25 AUGUST 2020**

**3**

<b>Report Title</b>	<b>PROPOSED AMENDMENTS TO THE CODE OF CONDUCT FOR MEMBERS AND THE ARRANGEMENTS UNDER WHICH ALLEGATIONS CAN BE INVESTIGATED</b>
<b>Purpose of Report</b>	To refer the recommendation of Council of the 16 <sup>th</sup> July 2020 to the committee and provide members with an updated Code of Conduct and process for investigating complaints pursuant to the reference from Council.
<b>Decision(s)</b>	<p><b>It is recommended that Audit &amp; Standards Committee:</b></p> <ul style="list-style-type: none"> <li><b>a) Consider the draft amended Code of Conduct and Arrangements for investigating complaints appended to this report and, subject to any changes it wishes to make, recommend them to the next meeting of Council for adoption</b></li> <li><b>b) Authorise the Monitoring Officer to provide town and parish councils with the proposed process for investigating complaints for information and comment prior to consideration by Council at its next meeting</b></li> <li><b>c) Instruct the Monitoring Officer to ensure that the register of members gifts and hospitality is updated and published quarterly</b></li> <li><b>d) That where applicable, a report on any separate bodies set up or owned by the Council should be provided as part of the Annual Governance Statement to the committee and giving a full picture of its relationship with those bodies.</b></li> </ul>
<b>Consultation and Feedback</b>	<p>The Audit and Standards Committee has responsibility for monitoring ethical standards within the authority and this report provides draft documents for it to consider by way of consultation.</p> <p>If approved the arrangements will be circulated to town and parish councils and all members of Stroud District Council for information prior to final approval by Council.</p> <p>The Monitoring Officer has consulted with the Independent Persons in the preparation of the drafts appended to this report.</p>
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<b>Options</b>	The committee could decide not to accept any changes to the Code of Conduct or Arrangements but this is not recommended and would not comply with the reference from Council.			
<b>Background Papers</b>	None			
<b>Appendices</b>	Appendix A - the draft members Code of Conduct together with 'clean copy' Appendix B - the draft arrangements for investigating allegations under the Code of Conduct Appendix C – Link to the existing members Code of Conduct and investigations procedure - <a href="https://www.stroud.gov.uk/council-and-democracy/corporate-plans-and-policies/constitution">https://www.stroud.gov.uk/council-and-democracy/corporate-plans-and-policies/constitution</a>			
<b>Implications (further details at the end of the report)</b>	Financial	Legal	Equality	Environmental
	No	Yes	No	No

## 1. Background

At its meeting on the 16<sup>th</sup> of July 2020, Council considered the following motion which had cross party support:

“Stroud District Council believes, in the light of local, national and international Black Lives Matters protests, and the four Party Group Leaders’ commitment to “promoting equality and tackling discrimination” issued on 9 June, that the Council needs to update the Councillors Code of Conduct for councillors and resolves that the draft appended to this motion is strongly recommended to the next meeting of the Audit and Standards Committee for final review before recommendation at a future Council meeting.

Council should also instruct the Audit & Standards Committee to consider the arrangements under which allegations under the Code of Conduct are investigated as a matter of urgency and, in consultation with Group Leaders, provide a response to the consultation currently being undertaken by the Local Government Association into its draft Model Code of Conduct."

1.1 The draft minute of Council records the resolution which was passed unanimously as follows:

- *That the draft appended to the above Motion was strongly recommended to the next meeting of the Audit and Standards Committee for final review before recommendation at a future Council meeting.*
- *Council instructs the Audit and Standards Committee to consider the arrangements under which allegations under the Code of Conduct are investigated as a matter of urgency and, in consultation with Group Leaders, provide a response to the consultation currently being undertaken by the Local Government Association into its draft Model Code of Conduct.*

- 1.2 The purpose of this report is to refer the recommendation of Council to the Audit & Standards Committee for it to consider. There are three parts to the recommendation namely:
1. Consider the draft amended Code of Conduct which Council strongly recommended the committee to review and recommend to the next Council meeting for adoption.
  2. Consider the arrangements under which allegations under the Code of Conduct are investigated.
  3. In consultation with Group Leaders, provide a response to the consultation being undertaken by the Local Government Association in relation the draft model code.
- 1.3 Whilst it is reviewing the Code of Conduct and the Arrangements, the firm advice of the Monitoring Officer is that the committee should consider formal implementation of the best practice recommendations made by the Committee for Standards in Public Life.
- 1.4 The Committee on Standards in Public Life (CSPL) undertook a review of the ethical framework for members with its report being published in January 2019<sup>1</sup>. The outcomes of the review were reported to this committee on the 7<sup>th</sup> May 2019 (Item 7 accessible [here](#))
- 1.5 The CSPL review concluded that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. 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 breaches fairly and with due process
  - enforcing codes and imposing sanctions for misconduct
  - declaring interests and managing conflicts of interest
  - whistle blowing
- 1.6 The CSPL also assessed whether the existing structures, processes and practices are conducive to high standards of conduct in local government and were to make any recommendations for how they can be improved. The full report can be accessed [here](#).
- 1.7 The CSPL made 15 best practice recommendations which are contained in the report which is accessible by the link in the previous paragraph. The expectation of the CSPL was that the best practice recommendations should be adopted by all councils. The CSPL wrote to all local authority Chief Executives in July to follow up the recommendations and will write to each council in the autumn to ask for progress against the recommendations.
- 1.8 The Monitoring Officer has included all but two of the best practice recommendations in the draft Code and Arrangements appended to this report in order that the authority can report to the CPSL that it has formally adopted their recommendations. In respect of the two recommendations which it was not appropriate to build into the draft Code and arrangements, the Monitoring Officer will suggest an approach below that the committee may wish to consider in terms of future best practice as part of its role in monitoring the ethical standards process adopted by Council.

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<sup>1</sup>Local Government Ethical Standards: A review by the Committee on Standards on Public Life - 30 January 2019

## 2. Draft Amended Code of Conduct

Council recommended amendments to the existing Code and proposed changes by means of the draft appended to the motion to Council which it strongly recommended to the committee. As mentioned above, the Monitoring Officer has also suggested amendments to comply with the best practice recommendations and to provide further clarification for members where he considers that necessary. These amendments will be explained below.

- 2.1 However, in order to ensure that the committee is able to easily see the proposed changes, the Monitoring Officer has colour coded the amendments. Those highlighted in grey are changes proposed by Council as a result of the motion. The amendments in yellow are changes suggested by the Monitoring Officer. A 'clean' copy will also be provided to members as the amendments can impact on the overall clarity of the document.
- 2.2 Rather than refer to the legal implications in isolation at the end of this report the Monitoring Officer will set out the legal position in relation each element as it is discussed.
- 2.3 The Localism Act 2011 (the Act) (Section 27) places a duty on relevant authorities to promote and maintain high standards of conduct. In order to discharge its duty a council must adopt a code dealing with the conduct that is expected of members of the authority when they are acting in that capacity. A town or parish council may either adopt the code adopted by its principal authority – i.e. Stroud District Council - or adopt its own. There are a variety of approaches to codes adopted by town and parish councils within Stroud District.
- 2.4 Section 28 of the Act provides that a relevant authority must secure that a code adopted by it is, when viewed as a whole, consistent with the Nolan Principles. These are:
  - (a) selflessness
  - (b) integrity
  - (c) objectivity
  - (d) accountability
  - (e) openness
  - (f) honesty
  - (g) leadership
- 2.5 Any Code must include provisions which the authority considers appropriate to register and disclose pecuniary interest and interests other than pecuniary interests. Other than these requirements, it is a matter for each council to adopt a code that is relevant to its particular circumstances. There is power to amend or replace a code as circumstances dictate.
- 2.6 Section 28(3) provides that a failure to comply with the Code can only be dealt with in accordance with arrangements for investigating and making decisions on allegations adopted by Council and the proposed changes to the arrangements will be referred to below. However, the legal position is clear that it is the responsibility of the principal council, i.e. Stroud District Council, to make a decision regarding breaches of the Code and to decide any sanctions in relation to allegations made against town and parish councillors.
- 2.7 Stroud District Council initially adopted the members Code of Conduct on 5<sup>th</sup> July 2012, updated it on 10<sup>th</sup> April 2014 and again in November 2016. It forms part of the Constitution

and the function of adoption, revision or replacement of the Code may only be discharged by Council. Any changes to the Code must be publicised to bring it to the attention of the residents of the district.

## 2.8 Amendments

- 2.9 A 'purpose' section has been introduced to provide clarity to both members and members of the public about the Code of Conduct. It is intended to make it clear what the Code is intended to do and why.
- 2.10 The legal position as set out in Section 27 of the Localism Act is that the code of conduct applies to members **when they are acting in that capacity**. This is of course open to interpretation and can lead to confusion, particularly when members use social media. As such the CSPL recommended a change to legislation to make the Code applicable in other aspects with a rebuttable presumption that a member is acting in his/her official capacity unless proven otherwise. The current legal position is that the Code can only apply when a member is acting in their capacity as a member.
- 2.11 The proposed changes to the Code introduced by the motion clarify the applicability of the Code and sub paragraphs (a) – (c) are capable of application to members because they cover situations where a member uses their office inappropriately - the 'don't you know who I am' scenario. (Though if one considers the CPSL report, it is clear that strictly speaking, the current law would not cover this situation). However, the Monitoring Officer is of the view that sub paragraph (d) would not be lawful and could be open to challenge because it seeks to include conduct which would be in a members personal life and consequently beyond the reach of the Code.
- 2.12 If a member is convicted of a criminal offence and sentenced to imprisonment for a period of three months or more, they are disqualified from being a councillor. However, whilst there are calls for Section 80 of the Local Government Act 1972 to be amended to reflect modern sentencing practice, the provisions of the '72 Act have not been changed. Therefore, it is the Monitoring Officers view that the Code cannot extend further than that envisaged in legislation or into a members private life which this amendment purports to do.
- 2.13 The interpretation section at paragraph 1.2 will assist members and the Monitoring Officer has added some further clarification in this regard.
- 2.14 The Monitoring Officer is of the view that, given the current legislation in England, Paragraph 1.3 can only apply when a member is acting in their official capacity. Whilst this could cover situations where members referred to themselves as councillor or discussed council business on social media for example, it would not be appropriate for the Code to extend to a member's private life. Members are not perpetually on duty 24/7. The wording is taken from the Welsh Code of Conduct where conduct in one's private life can be capable of bringing the office or authority into disrepute, but this is based on different legislation to England. If this paragraph is added to the Code, it will purport to extend the Code to situations where members could potentially be in breach of the Code for something done in their private life.

- 2.15 The former section title of “Principles” has been changed to “General Obligations” because the draft appended to the Council motion intended that the Nolan Principles should now be included as obligations, a failure to comply with these principles could in itself now be a breach of the Code. Previously they were specifically excluded.
- 2.16 There is no legal reason why the Nolan Principles should not be included in this way, indeed some council’s codes are merely a re-statement of the Nolan Principles with no other detail. However, they are principles and are potentially very wide in application and interpretation. As the CPSL put it, “*the intention was not that the Seven Principles could be treated as if a self-contained code, but instead that the principles should be used to underpin a well-drafted, practical and locally-relevant guide to behaviour*”<sup>2</sup>. It went on to say that a “*...code of conduct is not a values or vision statement for an organisation. It therefore needs to state clearly what is required of councillors rather than an aspiration or aim. **Often this will mean phrasing requirements in terms of what councillors ‘must not’ do***”<sup>3</sup> [Emphasis added].
- 2.17 It is likely that the inclusion of the Nolan Principles will significantly widen the scope of the Code, will be very difficult to administer and will probably lead to an increase in complaints which will in turn require additional resources.
- 2.18 Part 3 of the Code has been renumbered to reflect particular categories of behaviour / requirements. Paragraph 3.1 (c) (iii) has been added to govern the use of the authority’s resources which is reflected in the LGA draft model code (though the wording here has been taken from the Manchester City Code<sup>4</sup>). This is an important omission in the existing Code as members must be made aware of the limitations imposed by the Local Government Act 1986 relating to local authority publicity.
- 2.19 Paragraph 3.3 was added by Council in its motion with the intention that the Public Sector Equality Duty (PSED) should be included within the Code. There have been slight amendments suggested in yellow to match the wording in the Code and to provide for the fact that members can only do their best to comply with the PSED, they do not have the ability to control the Council’s application of it. If definitive wording such as “will” is included, members will be potentially in breach of the Code when they have absolutely no control over a situation. In legal speak, the ‘mischief’ that this is sought to address relates to the potential for members to make comments on social media which may be, or perceived to be, in breach of equality requirements. The wording will enable a more proportionate application of this requirement and provide more certainty for members.
- 2.20 Paragraph 3.4 reflects the LGA draft model code requirements in terms of civility.

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<sup>2</sup> CSPL report p.30

<sup>3</sup> CPSL report p.42

<sup>4</sup> [https://secure.manchester.gov.uk/info/997/committee\\_membership/2846/standards\\_committee/3](https://secure.manchester.gov.uk/info/997/committee_membership/2846/standards_committee/3)

- 2.21 The Monitoring Officer has added wording to 3.5 to reflect the fact that members should not become involved in any investigation under the Code. The specific requirement not to intimidate has been removed as it is covered by the definitions of bullying and harassment which reflects the CSPL best practice requirement #1.
- 2.22 In paragraph 3.6, the wording “or the member” has been added to reflect the fact that members are data controllers in their own right. The previous wording only included information acquired by the Council which was too narrow in scope. Sub paragraph (iii) has been added to provide members with more clarity around this provision and sub paragraph (b) has been added to cover GDPR.
- 2.23 Paragraph 3.7 has been added as it is included in the LGA draft model code.
- 2.24 Paragraph 3.8 complies with CPSL best practice recommendation #2.
- 2.25 Paragraph 3.9 has been included to make reasonably necessary training mandatory. This will cover for example training on the Code of Conduct and ethical standards, Information Governance and all training for new councillors.
- 2.26 The general requirement regarding interests has been deleted because it duplicates paragraph 3.1(a). Other than that and some consequential numbering changes, no suggestions have been made to make changes to the interest requirements given that they are provided for by statute and that the LGA draft model code will provide a template that can be considered at a later date.

### 3. Arrangements

As stated above, Section 28 (6) of the Localism Act 2011 provides that *a relevant authority other than a parish council must have in place—*

*(a) arrangements under which allegations can be investigated, and*

*(b) arrangements under which decisions on allegations can be made*

- 3.1 The Council adopted arrangements which were updated in November 2016. A recent complaint exposed a flaw in the arrangements which will be mentioned below. In addition, the CSPL best practice recommendations impacted greatly on the arrangements. As such the Monitoring Officer has prepared a new set of arrangements which are intended to replace the current arrangements in their entirety.
- 3.2 Section 28 (7) of the Localism Act state that the authority must ensure the appointment of at least one independent person:
- (a) whose views are to be sought, and taken into account, by the authority before it makes its decision on an allegation that it has decided to investigate, and*
- (b) whose views may be sought—*
- (i) by the authority in relation to an allegation in circumstances not within paragraph (a)*

- 3.3 The primary purpose of the Independent Person is to provide a check and balance to the arrangements adopted by a Council to determine complaints under the Code of Conduct to ensure that members have an independent view before making decisions on breach and sanctions. This is primarily a safeguard to the rights of individual members in the absence of a body which oversees standards with the abolition of the Standards Board for England and is reinforced in the recent Committee on Standards in Public Life review of the ethical standards regime in England.
- 3.4 The authority must seek the views of the Independent Person before it makes a decision when there has been an investigation– i.e. the Standards Panel. The authority **may** seek the views of the Independent Person in relation to allegation before a decision has been made to investigate. This has normally manifested in the involvement of the Independent Person at the point when the Monitoring Officer is making a preliminary decision who will seek the view – not be bound by – the Independent Person.
- 3.5 The issue exposed in a recent complaint relates to paragraphs 1.8 and 1.9. The process as worded is capable of creating an expectation amongst complainants that the Independent Persons will make the decision as a result of a request for a review and not the Monitoring Officer. On a literal interpretation, the process is unlawful because the Council can only delegate functions to a committee, sub-committee or an officer - the Independent Person is not an officer (Section 101 LGA 1972). Furthermore, in providing that the Independent Person must consult with the Monitoring Officer, it creates a conflict because the Monitoring Officer is involved in reviewing his or her own decision.
- 3.6 Therefore the arrangements will be changed so that the view of the Independent Person will be sought by the Monitoring Officer before a decision is made and at other appropriate points in the procedure. If a complainant is unhappy with an outcome – and members will see that there is a lot more consultation with complainants in the new arrangements – then they can refer the matter to the Local Government and Social Care Ombudsman.
- 3.7 It is not intended to provide a commentary on the proposed arrangements, suffice to say that they are intended to be a guide to complainants and members and set out the process in a logical way. They incorporate the CSPL best practice recommendations which are referenced in footnotes in the document.

#### **4. Consultation on LGA draft model Code of Conduct**

- 4.1 The aim of the Localism Act was to place matters such as the code of conduct within the hands of individual councils, but in doing so there are understandably considerable variations in approach and content. The CSPL heard evidence that the variation between codes, even where the codes do not differ in quality, is problematic as it creates confusion among councillors who may be serving at multiple tiers of local government (i.e. twin or triple hatted). It also found that the current situation creates confusion among members of the public over what is required of different councillors.
- 4.2 Consequently, the CSPL came to the conclusion that there should be a national model code of conduct, but that this should not be mandatory, and should be able to be adapted by individual authorities. It was recommended that the model code should be drafted by the Local Government Association, given their significant leadership role in the sector, in



consultation with representative bodies of councillors and officers of all tiers of local government.

- 4.3 The model Code incorporates the CSPL recommendations on Local Government Ethical Standards and representations from its membership. Part of the CSPL recommendations related to the introduction of sanctions for breaches of the code, alongside an appeals process. This aspect is outside the scope of the LGA consultation, as it requires legislative changes by Government, but the LGA has sought to reflect some of the possible changes by using square brackets where legal changes would be necessary. It is suggested that a model code would create consistency across England and reflect the common expectations of the public regardless of geography or tier of authority.
- 4.4 The LGA is continuing to take soundings from the sector on the issue of sanctions in anticipation of a Government response to the CSPL recommendations. In the meantime, the consultation was expected to focus on key areas upon which the LGA would welcome views to help finalise the draft code and is aimed at councillors and officers from all tiers of local government. The consultation on the draft member code of conduct ran until Monday 17<sup>th</sup> August 2020.
- 4.5 Unfortunately, due to the current circumstances, it was not possible for the Monitoring Officer to take a report to Audit & Standards earlier and as such a note was circulated to members of the committee with a request that if they had any comments, they should provide them to the Monitoring Officer who would respond on behalf of the Council. Any representations were submitted as part of the consultation in consultation with Group Leaders.

## 5. Outstanding best practice recommendations

Almost all of the best practice recommendations have been picked up in the draft Code and Arrangements, but there are two outstanding which need to be actioned and these are:

**Best practice 5:** Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.

**Best practice 14:** Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.

- 5.1 It is recommended that the committee considers whether it could demonstrate compliance with these best practice recommendation 5 by instructing the Monitoring Officer to update and publish the gifts and hospitality register quarterly. Best practice recommendation 14 could be satisfied by inclusion in the Annual Governance Statement as suggested.

## **6. IMPLICATIONS**

### **6.1 Financial Implications**

There are no financial implications arising from this report.

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### **6.2 Legal Implications**

Any legal implications are set out in the report.

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### **6.3 Equality Implications**

There are no equality implications arising from this report.

### **6.4 Environmental Implications**

There are no environmental implications arising from this report.