

<b>REPORT TO:</b>	<b>STANDARDS COMMITTEE</b>
<b>DATE:</b>	17 November 2020
<b>REPORT OF:</b>	Sandra Stewart – Executive Director Governance & Resources (Monitoring Officer)
<b>SUBJECT MATTER:</b>	<b>UPDATE RE: LOCAL GOVERNMENT ASSOCIATION MODEL MEMBER CODE OF CONDUCT</b>
<b>REPORT SUMMARY:</b>	<p>The LGA has committed to reviewing the current model member code of conduct, as recommended by the Committee on Standards in Public Life's report into Local Government Ethical Standards. The LGA held an event on Civility in Public Life with a range of stakeholders at the end of last year and three consultation workshops at the beginning of this year. Their consultants have also examined examples of good practice, both in local government and other professions. The LGA consultation draft model member code of conduct is the result of this initial work. It is the intention to create additional guidance, working examples and explanatory text.</p> <p>The onset of COVID-19 and the measures that have been introduced to curb its spread have changed the workings of local government. Remote meetings and decision-making processes have been introduced, but these have not diluted the importance of high standards of conduct of local government elected members. With more communication taking place remotely and online between members and residents, particularly through social media, there may be more difficult and heated discussions as some seek to express the fear, frustration and heightened emotions they are experiencing at this time. However, abuse, threatening and intimidatory communications continue to be unacceptable, and the LGA have sought to address these issues in the draft code.</p> <p>This report looks at the draft Model Code of Conduct for Members in comparison to Tameside's current Code of Conduct for Members and highlights the main differences between them.</p>
<b>RECOMMENDATION(S)</b>	The Standards Committee are asked to note the changes and recommend to Council to adopt the final version of the Local Government Association Model Code of Conduct for Members once published, which is expected to be in December of this year.
<b>FINANCIAL IMPLICATIONS:</b> (Authorised by Borough Treasurer)	There are no significant financial issues arising from this Report.
<b>LEGAL IMPLICATIONS:</b> (Authorised by Borough Solicitor)	The promotion and maintenance of high standards of conduct by councillors is an important part of maintaining public confidence in both the council and its members. Failure to do so could have significant reputational implications.
<b>RISK MANAGEMENT:</b>	Standards Committees should be aware of the National position in order that consistency of approach is taken in respect of

setting and advising on local ethical and standard issues.

**LINKS TO COMMUNITY  
PLAN:**

Support the current arrangements for ethical and corporate governance of the Authority to ensure that the public can have confidence in local government.

**ACCESS TO INFORMATION**

**NON-CONFIDENTIAL**

**This report does not contain information which warrants its consideration in the absence of the Press or members of the public**

**REFERENCE DOCUMENTS:**

The background papers relating to this report can be inspected by contacting the report writer, Sandra Stewart, the Council's Borough Solicitor and statutory Monitoring Officer by:



Telephone: 0161 342 3028



e-mail: [Sandra.Stewart@tameside.gov.uk](mailto:Sandra.Stewart@tameside.gov.uk)

## **1. INTRODUCTION**

- 1.1 The Committee on Standards in Public Life conducted a review of Local Government Ethical Standards in 2018 and the subsequent report was published in January 2019. One of the recommendations of the report was that a new national code of conduct for members was to be created by the LGA for all local Authorities to use as a basis for their own code. The Local Government Association (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.
- 1.2 The role of councillor in all tiers of local government 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 all adopt the behaviours and responsibilities associated with the role. The conduct of an individual councillor affects the reputation of all councillors. We all want the role of councillor to be one that people aspire to and want to participate with. We need to continue 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.
- 1.3 All councils are required to have a local Member Code of Conduct. The Local Government Association 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 councils and councillors on the application of the Code, whilst the National Association of Local Councils (NALC) and the county associations of local councils can offer advice and support to town and parish councils.
- 1.4 A councillor role is to represent local residents, work to develop better services and deliver local change. The public have high expectations of councillors and entrust them to represent everyone (be it ward/town/parish), taking decisions fairly, openly, transparently and with civility.
- 1.5 Councillors 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. The Local Government Association Model Member Code of Conduct, therefore, has been designed to protect our democratic role, encourage good conduct and safeguard the public's trust in local government.

## **2. PURPOSE**

- 2.1 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.
- 2.2 It is also to protect councillors, 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.
- 2.3 The overarching aim is to create and maintain public confidence in the role of member and local government.

### 3. APPLICATION OF THE CODE

- 3.1 The Code of Conduct applies to a councillor when they are acting [***or claiming or giving the impression that they are acting***]<sup>1</sup> in [***public or in***]<sup>2</sup> their capacity as a member or representative of the council, although councillors are expected to uphold high standards of conduct and show leadership at all times. The Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and via social media, [***including where a councillor could be deemed to be representing your council or if there are potential implications for the council's reputation.***]<sup>3</sup> Model conduct and expectations is for guidance only, whereas the specific obligations set out instances where action will be taken.

#### **The seven principles of public life**

- 3.2 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 life. This Code has been developed in line with these seven principles of public life, which are set out in **Appendix A**.

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

- 3.3 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.
- 3.4 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', and sanctions to be imposed on any councillors who breach the Code.
- 3.5 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.
- 3.6 Failure to comply with the requirements to register or declare disclosable pecuniary interests is a criminal offence.
- 3.6 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.
- 3.7 Note – items in square brackets [x] refer to recommendations made by the Committee on Standards in Public Life<sup>4</sup> and may be part of a future Government consultation. This includes possible future sanctions and appeals processes. This is a significant change from the current Code.
- 3.8 The current Members Code of Conduct, which applies to all elected members can be found on the website at: <https://tameside.moderngov.co.uk/documents/s13569/Part%205a%20-%20Code%20of%20Conduct.pdf>

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<sup>1</sup> 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".

<sup>2</sup> 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

<sup>3</sup> See 1 and 2 above

<sup>4</sup> See CSPL website for further details [www.gov.uk/government/news/theprinciples-of-public-life-25-years](http://www.gov.uk/government/news/theprinciples-of-public-life-25-years)

- 3.9 In 2012, the then Government significantly reduced the role of Standards Committee and Monitoring Officer to deal and consider complaints and abolished the Standards Board for England taking the view that the electorate should determine who the representative was and sanction their behaviour through the ballot box unless the elected member's behaviour was criminal.
- 3.10 Criminality was refined and narrowed to failures to declare interests.
- 3.11 Clearly all elected members are subject to the laws of the land and any such complaints would be investigated by the Police in the usual way.
- 3.12 The complaints process does not apply to complaints that are about:
- any conduct where the Councillor is not acting as a councillor for example in their private life
  - Incidents that happened before a member was elected or chosen to serve.
  - Incidents that generally happened more than 12 months ago
  - The way a council conducts or records its meetings.
  - The way a council as a whole has or has not done something. This may be a matter for the Local Government Ombudsman if the council has not dealt with the matter properly and it has not been resolved locally.
  - Decisions of the council or which are about one of the services it provides. In this case, you should ask how to complain using the relevant council's own complaints system.
- 3.13 Any complaints are considered by the statutory section 5 Monitoring Officer usually in consultation with the Independent Person appointed under the Localism Act 2012.
- 3.14 The options available include:
- Informal resolution through, for example, seeking an apology from the member who is the subject of the complaint or attempts at conciliation.
  - Formal investigation to the Standards Sub-Committee
  - No further action.
- 3.15 Where the elected member or the authority make a reasonable offer of local resolution, but a complainant is not willing to accept that offer, this is taken into account of this when deciding whether the complaint merits formal investigation.
- 3.16 Depending on the nature of the complaint, it may be referred for formal investigation to the Standards Committee.
- 3.17 If the complaint identifies criminal conduct or breach of other regulations by any person, the Monitoring Officer has the power to call in the Police and other regulatory agencies.
- 3.18 There is no right of appeal against the decision as to what steps, if any, the Council intends to take in relation to a complaint.
- 3.19 If a complainant feels that the authority has failed to deal with their complaint properly, they may make a complaint to the Local Government Ombudsman.
- 3.20 The Code of Conduct for Members makes it clear that the majority of the Code applies only to a Councillor's actions in his capacity as a Councillor. The High Court considered this issue in detail when it considered and upheld the decision of the Case Tribunal that Ken Livingstone was no longer discharging his functions as Mayor of London in telling a reporter that he was acting just "*like a concentration camp guard*" in obeying his employer's instructions to waylay Ken Livingstone and seek to interview him as he walked home after

an evening reception at City Hall. By making it clear to the reporter that he had no intention to reply to the reporter's questions and that he regarded himself as being "off duty", Ken Livingstone had done enough to take himself outside the Code of Conduct's requirement to "treat others with respect".

- 3.21 The High Court concluded that where the Councillor is doing something in an entirely private capacity, where his conduct had nothing to do with his position as a Councillor, he will not be covered by the Code of Conduct.
- 3.22 By way of illustration, the High Court referred to a Councillor who is caught shoplifting or found guilty of drunken driving and said that, if it had been the intention of Parliament to subject a Councillor to a Code of Conduct, which extends to conduct in his private life, Parliament should have spelled out what is to be covered. On that basis, Ken Livingstone was not performing his functions as Mayor of London when he made his remarks to the reporter, and so the Case Tribunal was wrong to find that the Code of Conduct could apply to his conduct at the time.
- 3.23 This interpretation is consistent with Article 10 of the Human Rights Act 1998, as the High Court pointed out. The presumption in that Article is that "*everyone has the right to freedom of expression*", and that right shall include the freedom to hold opinions and to impart information. So Ken Livingstone was entitled to hold the opinion that the reporter was acting unreasonably, and to express that view, and the law could only restrict that right, or penalise him for expressing it, where "*necessary in a democratic society for such purposes as the protection of morals or the reputation or rights of others*".
- 3.24 The High Court found that, since he was "off duty", he had the right to express himself as forcibly as he thought fit, at least on matters which were not so close to his official duties as to bring him back within the reach of the Code of Conduct. Mr. Justice Collins said that, however offensive and undeserving Ken Livingstone's remarks might be his right of freedom of speech as a private individual must prevail.
- 3.25 There is also a difference between actions which bring a Councillor into disrepute, and those which diminish the reputation of his office, or of the authority of which he is a member. The High Court was clear that Ken Livingstone's remarks might reasonably diminish public respect for him as an individual, but that it would have been necessary for the Case Tribunal to have gone a stage further and consider whether his words brought the office of Mayor of London into disrepute. By way of guidance, the High Court suggested that misuse of public office for personal advantage is likely to diminish public respect for that office, but personal misconduct is less likely to do so, even where the office holder is personally associated with the office.
- 3.26 The effect of this judgment is that, currently where a Councillor does something quite outside his functions as a Councillor, even where that action clearly reflects upon his/her credibility to act as a Councillor such as a criminal offence of dishonesty, the only way in which the law can prevent that Councillor from continuing to act as a Councillor is where the Councillor is disqualified under Section 80 of the Local Government Act 1972 as a result of being convicted of a criminal offence and given a custodial sentence of 3 months or more (whether or not suspended).
- 3.27 Even then, disqualification does not bite until any appeal, however unmeritorious, has been dismissed, as was demonstrated when Councillor Jim Speechley, the former Leader of Lincolnshire County Council, was given an 18 month custodial sentence for misconduct in public office but remained a Councillor for more than 6 months, whilst in prison, until his appeal was summarily dismissed. Otherwise, therefore in the absence of legislation regulating behaviour in councillors private lives the Court states that it is for the electorate not to re-elect a Councillor who has demonstrated by their conduct in their private life that they are unworthy of public trust.

- 3.28 **Consequently, it should be noted that generally, the Code doesn't apply to Social Media because members aren't carrying out their council duties and do so in a personal capacity as we do not host their social media accounts.**
- 3.29 Moreover, as explained Article 10 ECHR provides the right to freedom of expression and information, subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".
- 3.30 This right includes the freedom to hold opinions, and to receive and impart information and ideas.
- 3.31 Article 10 protects both popular and unpopular expression – including speech that might shock others – subject to certain limitations.
- 3.32 *The case of Heesom v Public Services Ombudsman for Wales [2014] EWHC 1504 (Admin)* had confirmed that what was said by elected politicians was subject to "enhanced protection", applying to all levels of politics (including local politics); and that the protection "extends to all matters of public administration and public concern including comments about the adequacy or inadequacy of performance of public duties by others".
- 3.33 Clearly, like everyone councillors are subject to the laws of defamation and any criminal obscenity restrictions.
- 3.34 Additionally, whilst some matters don't breach the very strict framework for councillors when undertaking their duties but it may in fact be in breach of their party political code of conduct and this may be an avenue that complainants want to follow.
- 3.35 The model code suggests a new duty of acting "with civility". There is clearly a major issue with regard to social media and the behaviour of Councillors. A recently reported case on the BBC News/"Lincolnshire Live" websites involved the Chair of a Parish Council and farmer who threatened on Twitter, to take action against those in the village seeking to take part in a vigil outside the Parish Church in support of "Black Lives Matter". He has now resigned. It would appear to give the necessary enforcement to the Council's social media.

#### **4. EXAMPLE LGA GUIDANCE AND RECOMMENDATIONS**

##### **Internal resolution procedure**

- 4.1 Under the new Code councils must have in place an internal resolution procedure to address conduct that is in breach of the Member Code of Conduct.
- 4.2 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.
- 4.3 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.
- (a) an informal discussion with the monitoring officer or appropriate senior officer
  - (b) an informal opportunity to speak with the affected party/ies
  - (c) a written apology
  - (d) mediation
  - (e) peer support
  - (f) requirement to attend relevant training



- (g) where of a serious nature, a bar on chairing advisory or special committees for up to two months.
- (h) 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.

4.4 The process for dealing is the same as it is now although it sets out more specifically the proposed sanctions.

## **5. DIFFERENCES BETWEEN THE DRAFT MODEL CODE OF CONDUCT & THE CURRENT CODE**

- 5.1 The Draft Model Code of Conduct for Members and Tameside's current code both take a rule based approach. A rules based code is preferred when a document is to be public facing as it clearly sets out what the public can expect from Elected Members.
- 5.2 The content of the Draft Model Code of Conduct is very similar to Tameside's code of conduct, which is the same code that was adopted across Greater Manchester with the differences being mainly in the level of description and the number of examples/definitions provided.
- 5.3 The main difference is that Committee for Standards in Public Life (CoSPL) 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". The Committee for Standards in Public Life (CoSPL) 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
- 5.4 The draft Model Code of Conduct for Members details Councillors' responsibilities for declarations of gifts and hospitality and sets the minimum value at £25 which is in line with our existing Policy. It was recommended by the Committee for Standards in Public Life (CoSPL) that the Government set a national rule of £50 or £100 from a single source over the course of a year but that is still awaiting action from Government.
- 5.5 The draft Model Code of Conduct for Members also includes a short description of a proposed internal resolution procedure. It includes details of proposed sanctions in relation to breaches, which is not something currently included in Tameside Code.
- 5.6 The Committee on Standards in Public Life (CoSPL) report published in January 2019 recommended creating an updated model code of conduct, by the Local Government Association (LGA) in consultation with representative bodies of councillors and officers of all tiers of local government. Workshops of members and Monitoring Officers took place to discuss the approach and content of the revised Code and a consultation on a draft Code ran for 10 weeks from Monday 8 June until Monday 17 August.
- 5.7 Lots of comments questions and feedback provided during the webinar sessions with high level consultation summary response with overwhelming support for the Code. But a number of issues were raised.
  - First person or third person
  - Respect or Civility?
  - More on social media including confidentiality.
  - Declaration of gifts £25 too low £50 too high?



- Need for accompanying guidance with examples
- Equality Act- obligation to comply
- Obligation to cooperate with investigation
- Compulsory training for members
- Sanctions

5.8 A Stakeholder roundtable to discuss the response and next steps took place on 30 September 2020 and the revised draft Code was considered at an LGA Councillors Forum on 22 October 2020.

5.9 The revised draft Code is being reviewed in light of this discussion and a final Code will then be prepared for submission to the LGA board for approval on 3 December 2020. The approved Code will then be published as the second Model Code of Conduct for Members. It is expected that the updated version will be released before the end of 2020.

## **6. RECOMMENDATIONS**

6.1 As set out at the front of the report.