

TRAFFORD COUNCIL

Report to: Standards Committee
Date: 22 September 2021
Report for: Decision
[Draft] Report of: Head of Governance and Deputy Monitoring Officer

Report Title

Councillor Code of Conduct

Summary

The Standards Committee is responsible for monitoring the Councillor Code of Conduct and for making recommendations to Full Council on any changes to the code.

The Local Government Association has produced a New Model Councillor Code of Conduct and guidance document.

This report recommends that the Council moves towards the adoption of the Model Code, which will ultimately result in amendments to the substance of the Council's current code of conduct

The Committee is asked to note the update of the LGA Model Code of Conduct, LGA Guidance and proposed action plan detailed within the report.

Recommendation(s)

It is RECOMMENDED that Committee:

- a) Note the content of the report, Local Government Association Model Councillor Code of Conduct and LGA Guidance document; and
- b) Agree the proposed actions detailed in the report.

Contact person for access to background papers and further information:

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1.0 Executive Summary

- 1.1 On 25 March 2021, the Committee received a report which provided information regarding the LGA the Model Code of Conduct (Appendix 1). The report informed Members that additional guidance was expected to be released by the LGA during

March 2021 and that the guidance was intended to aid Local Authorities with interpretation and implementation of the Model Code.

- 1.2 The March 2021 report also set out proposals for the Council to update its current Code of Conduct taking into account the Model Code and guidance from the LGA as well as views of GM authorities and Parish Councils.
- 1.3 Due to a delay in the publication of the LGA Guidance the proposals to update the Council's current code of conduct has not been possible.
- 1.4 This report provide Members with an update on the LGA Model Code, LGA Guidance and proposals to progress the development of a new code of conduct for Trafford.

2.0 Background Information

- 2.1 As you will be aware, Section 27(2) of the Localism Act 2011 requires every local authority to promote and maintain high standards of conduct by members and co-opted members of the authority. In discharging that duty the local authority must adopt a code of conduct that is expected to be followed by members when they are acting in that capacity.
- 2.2 Trafford Council's current Code of Conduct for Members was adopted by the Council on 19th September 2012 (and amended 25 November 2020) (Attached at Appendix 1). The code of conduct sets out the conduct expected of Members of the Council, both elected and co-opted.
- 2.3 Following recommendations made by the Committee on Standards in Public Life, the Local Government Association (LGA) consulted on the introduction of a model code of conduct for members in 2020.
- 2.4 On 23 September 2020 a report on the LGA's draft Model Code of Conduct was presented to the Standards Committee for noting. The Committee were informed that further versions of the Model Code were to be provided by the LGA, at which point Trafford Council would again review the position.
- 2.5 The Committee received a further report on 25 March 2021 which confirmed that the Model Code had been published by the LGA in December 2020 and confirmed that Local Authorities were awaiting a further publication of an LGA Guidance document which would provide a greater understanding the Model Code and support to Local Authorities in ensuring a consistent approach to use of the Model Code.
- 2.6 The March Committee report also detailed proposed actions in respect of consultation on and subsequent development of a new code of conduct for Trafford. The proposed actions were dependant on the publication of LGA Guidance which was intended to aid Local Authorities with interpretation and implementation of the Model Code.
- 2.5 The LGA have now produced a Model Councillor Code of Conduct ("Model Code") (Attached at Appendix 2) together with an LGA Guidance document ("Guidance") (Attached at Appendix 3). At the time of the March 2021 report, LGA Guidance was expected imminently, however there was a delay which resulted in the LGA Guidance being published in July 2021.

- 2.6 The Council, in undertaking an annual review of its existing code of conduct, now intends to progress the review of its existing code of conduct and consider whether any amendments are appropriate to enhance the Council's Compliance with its statutory duties under the Localism Act 2011. The Council in reviewing its existing code of conduct should consider the Model Code and LGA guidance documents, as well as views of GM authorities and Parish Councils.
- 2.7 There is no legal requirement for the Council to adopt the Model Code however, the Council's current Code of Conduct was largely based on the Model Code of Conduct which was proposed by the LGA following the passing of the Localism Act in 2011. In accordance with the Localism Act 2011, the Council may review its current arrangements and where appropriate make changes thereto. The LGA's guidance is clear that the Model Code can be amended to include appropriate local provisions.
- 2.8 A summary of the Model Code is set out below. The LGA model code does not differ greatly from the Council's current code, however the objective of proposing a national code was to ensure that obligations would be applied consistently at local authorities across the country and there are therefore advantages in ensuring that we remain consistent with the most up to date version of the Model Code.
- 2.9 In line with LGA guidance and the proposals set out in the Committee report dated 25 March 2021, it is proposed that the Council now undertakes steps to consult with interested parties on the proposed adoption of the Model Code. It should be noted that any such consultation exercise with take into consideration the work which is to be undertaken at a GM level.
- 2.10 Following completion of the steps proposed in the report, the Committee will be presented with a further report which details proposals on a new code of conduct for Trafford. Any changes to the Members' Code of Conduct and any associated requirements and documents, including any constitutional amendments will need to be referred to Council for consideration and any revisions to the Code and associated arrangements will need to be published in accordance with section 28 of the Localism Act 2011.

3.0 LGA Model Councillor Code of Conduct

- 3.1 Members will be aware that the Committee in Standards in Public Life ('CSPL') published a report into local government ethical standards. This had 26 recommendations and 15 Best Practice recommendations.
- 3.2 Two of the recommendations of specific relevance to this report were:
- A. 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
 - B. 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.

- 3.3 The LGA began work on drafting a model Code of Conduct in 2019, consulting on this in mid-2020. In December 2020, the LGA developed and published a Model Code in association with key partners. This was in response to the recommendation of the Committee of Standards in Public Life Local Government Ethical Standards 2019.
- 3.4 The Model Code was part of the work undertaken in order to support all tiers of local government to continue to aspire to high standards of leadership and performance. This is key to ensuring the same standards are met across all Local Authorities throughout the Country.
- 3.5 The Guidance published in July 2021, is clear that the Model Code can be used as a template for Local Authorities to adopt the Code in whole, but that it could also be used with appropriate amendments, to take into account any local circumstances.
- 3.6 The Model Code, together with the Guidance, has been designed to protect the democratic role, encourage good conduct, and safeguard the public's trust and confidence in the role of councillor in local government.
- 3.7 The LGA model is attached to the report – so this report does not repeat those provisions in full. In summary, however, the LGA Code covers:
- Application of the Code (under 'Definitions' and 'Application');
 - General Conduct requirements with regards to: Respect; Bullying, harassment & discrimination; not compromising impartiality of officers; confidentiality & access to information; disrepute; use of position; and use of local authority resources and facilities.;
 - Interests – detailing those to register and provisions on disclosing;
 - Gifts and Hospitality which is slightly more extensive in its requirements to register those gifts offered but rejected;
 - Appendix A – covers the Seven Principles of Public Life;
 - Appendix B – covers Registering Interests, with Table 1 covering the statutory Disclosable Pecuniary Interests;
 - Appendix C – includes the CSPL's Best Practice recommendations.

4.0 Proposed new Councillor Code of Conduct.

- 4.1 A review of the Council's current Councillor Code of Conduct is necessary to ensure that the Council's code of conduct is fit for purpose, provides clarity on expected behaviours and manages and reflects public expectations. It is also important to ensure that the code of conduct reflects advances in technology, social media, case law and changes in legislation.
- 4.2 The LGA Model Code is not mandatory and there is no mandatory form for a code, although certain things must be covered in it with reference to the Seven Principles of Public Life and interests. An adopted code can go beyond this – but must not prejudice those provisions.
- 4.3 Officers had originally intended to consult with Members in relation to the development of the new Code of Conduct for Trafford as part of its annual review of the Code of Conduct in March 2021. However due to the delay in the publication of the LGA Guidance document which led to the late release of the guidance from the LGA in July 2021, the effects of the pandemic and then the limited availability of Members over the

summer period, a consultative approach to the review of the new code has not yet been possible.

- 4.4 A review of the Model Code and Guidance has been undertaken and many of the provisions within the LGA Model Councillor Code of Conduct are aligned with the Council's current Code of Conduct.
- 4.5 There is much to recommend the Model Code and to support its adoption by the Council. However there are a few areas of minor differences between the current code and Model Code which will require further exploration and consultation in order to determine whether any local provisions would need to be included. For example:
- The Model Code and Trafford's current code both take a rules 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.
 - The standards are set out in the first person ("I ...") so a Member reads the Model Code as a personal commitment to behave in accordance with the standards;
 - The Model Code is relatively short and intended to be easily accessible to councillors, officers and members of the public alike. The content of the Model Code is very similar to Trafford's Current code of conduct with the differences being mainly in the level of description and the number of examples/definitions provided. Trafford's Code of Conduct goes into more detail in defining specific actions that a councillor should or should not do whereas the Model Code states each of the 12 rules in a simple fashion and then provides a short paragraph explaining the purpose of the rule for interpretation. As would be expected this has greatly shortened the Model Code. It should be noted, that the LGA guidance document is a much more detailed document which provides supporting narrative and examples to assist with the application of the code;
 - The main difference is one of style and Members may feel that the proposed Model Code is simpler to understand. Once again, the LGA guidance provides more supporting narrative and examples to assist with the understanding and application of the code;
 - The Model Code applies when acting in the capacity as a Councillor and applies to all forms of communication and interaction including electronic and social media communication. It clarifies that this can include when a member of the public could reasonably have the impression a member was acting as a Councillor;
 - The Model Code details Councillors' responsibilities for declarations of gifts and hospitality and sets the minimum value at £50. It recommends declaration of all gifts and hospitality even where that gift or hospitality falls below the set minimum of £50 and it makes similar recommendations in respect of accumulated small gifts and hospitality. Trafford's policy around gifts and hospitality is covered in a separate part of the Constitution to the Code of Conduct and the minimum value for declarations is set at £100. It was recommended by the Committee for Standards in Public Life that the Government set a national rule of £50 or £100 from a single source over the course of a year. The Council will need to determine an appropriate figure for this provision;
 - The Model Code contains three different categories of interests – Disclosable Pecuniary Interests (DPI); Other Registerable Interests (ORI); and Non-Registerable Interests (NRI). The Council's current code contains three

different categories of interests – Disclosable Pecuniary Interests; personal interests; and prejudicial interests.

The model Code sets out what Members must do to register, declare and behave in meetings where they have a disclosable pecuniary interest under the Localism Act 2011, another registrable interest and a non-registrable interest. “Non-registrable interests” are a new introduction to the Model Code of Conduct to cover situations where a matter affects a member’s financial interest or wellbeing, or that of a friend, relative or close associate.

The Model Code and Guidance provides a guide to the public and councillors as to what is or isn’t a conflict of interest and then how a conflict between the interest you may hold as an individual councillor and the public interest you must hold as a decision maker of a public authority can be best managed. Secondly, the Model Code provides a means to hold an individual councillor to account for their actions when they fail to manage that conflict of interest properly and put the decision of the public authority, including the public purse, and decisions around individuals’ daily lives, at risk.

Both the Model Code and the Council’s current code also determines when you should withdraw from a meeting.

The Council will need to determine if the Model Code sufficiently sets out obligations in respect of interests on a local basis.

Advantages of the LGA Model Code:

- The LGA have produced a model (subject to the versions produced) which has been prepared following national consultation;
- Covers most of the elements that you would expect within the Code and beyond most basic models and the Council may adopt it as a whole or in part;
- provides short guidance below each obligation under the main provisions of the Code – which should read in conjunction with the LGA’s guidance which will assist understanding;
- It offers an opportunity to reach out to local councils more effectively and give them greater and more consistent support through a national model that can be rolled out to the local councils (albeit it will be a matter for those councils to adopt);
- 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);
- The LGA have published more detailed supporting guidance to help understanding and provide further consistency in the approach to using the code and provides a tool for comparison and informal benchmarking between Monitoring Officers.;
- Training can be provided for Councillors;
- Trafford Council would be able to take the LGA annual review of the Code as its starting point for its own annual review which would be required to comply with the Best Practice Recommendation 15.

Disadvantages of the LGA Model Code:

- Trafford has produced its own Code which has, as indicated over time been adapted through our own Member's debate. There were/ are perceived benefits of having a localised code;
- Not all local councils may adopt the LGA Model Code, still causing some inconsistencies across the tiers of government.

5.0 Proposed Next Steps

- 5.1 Area of Best Practice 3 from the Committee of Standards in Public Life suggests that authorities review their Code of Conduct on an annual basis and where possible seek the views of the public, community organisations and neighbouring authorities. The publication of the model code and subsequent guidance provides an excellent opportunity carry out an in-depth review of Trafford's Code of Conduct.
- 5.2 A national survey conducted by LLG showed that 20% of local authorities were planning to accept the code in full, another 20% were going add parts of the code to their existing code, 55% were not planning to use the code, and 5% had not reviewed the model code yet. Given the range of views on the code and in keeping with area of best practice 3 it is suggested that Trafford works with other GM authorities and consults with Trafford's Parish Councils as part of the review.
- 5.3 At the time the Council's current Code of Conduct was developed Trafford took the lead for all GM authorities in drawing up the baseline Code of Conduct which was subsequently adopted across GM with some minor local variations. The GM Chief Legal Officers are currently considering the new Model Code and how it might be adapted for use by each authority as appropriate to their local circumstances.
- 5.4 It is proposed that the Council continue to engage with GM Chief Legal Officers on the development of a combined GM code which the Council can then use to consult with Members and Parish Councils to develop a new Councillor Code of Conduct for Trafford.
- 5.5 If the Council decided to retain its own version of the code, it would still need to review its current code, and continue doing this annually, which would involve further consideration by officers and Members.

Other Options

Retain our current Code of Conduct – but commence our own review and update any associated documents. This option is not seen as the best use of resources that the LGA has again taken a lead on this, consistent with the recommendations from the Committee for Standards in Public Life and the LGA have also indicated they will annually review the Code and provide guidance on interpretation

Reasons for Recommendation

To ensure that the final adopted Code of Conduct for Councillors is fit for purpose, provides clarity on expected behaviours and manages and reflects public expectations