



# COTSWOLD DISTRICT COUNCIL

Council name	<b>COTSWOLD DISTRICT COUNCIL</b>
Name and date of Committee	<b>COUNCIL - 20 JANUARY 2021</b>
Report Number	<b>AGENDA ITEM 8</b>
Subject	<b>ADOPTION OF LGA MODEL CODE OF CONDUCT, APPOINTMENT AND REMUNERATION OF INDEPENDENT PERSONS</b>
Wards affected	None
Accountable member	Cllr. Joe Harris, Leader Email: <a href="mailto:joe.harris@cotswold.gov.uk">joe.harris@cotswold.gov.uk</a>
Accountable officer	Patrick Arran, Monitoring Officer Email: <a href="mailto:patrick.arran@cotswold.gov.uk">patrick.arran@cotswold.gov.uk</a>
Summary/Purpose	To adopt the LGA Model Code of Conduct, appoint Independent Persons for standards matters and approve allowances payable
Annexes	Annex A - Prospective Independent Person CV Annex B - LGA Model Councillor Code of Conduct 2020
Recommendation/s	It is recommended that a) Council adopts the Local Government Association Model Code of Conduct with effect from the 1 <sup>st</sup> March 2021 b) Council notes that the Monitoring Officer will carry out training prior to it coming into effect. c) Phyllida Pyper and John Acton are appointed as Independent Persons with immediate effect and that Michael Pagett-Wilkes is re-appointed as Independent Person, all appointments to be for a maximum of one year. d) The Independent Persons are paid an all-inclusive allowance of £1000 per annum on a monthly basis.
Corporate priorities	N/A
Key Decision	NO
Exempt	NO
Consultees/ Consultation	Chair of Audit Committee, Leader & Deputy Leader

1. Section 27 of the Localism Act 2011 (the Act) 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. 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. There is also a requirement to ensure that appropriate measures are taken to record and declare 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.
  - 1.1 Cotswold District Council has a code of conduct for members which forms part of the Constitution.
  - 1.2 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. 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
    - whistleblowing
  - 1.3 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](#)
  - 1.4 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 now 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. It also found that the current situation creates confusion among members of the public over what is required of different councillors. This is the also the experience of the Monitoring Officer.
  - 1.5 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.

## The Model Code

2. The Local Government Association (“the LGA”) released a draft Model Member Code of Conduct for consultation on 8 June 2020. Its aim was stated to be that:

*“the draft Model Member Code of Conduct aims to be concise, written in plain English and be understandable to members, officers and the public. The draft Model Member Code has been designed to aid members in all tiers of local government model the behaviours and high standards that anyone would expect from a person holding public office. Equally, it articulates behaviour which falls below the standards that would be expected of council members.”*

There was extensive consultation and response on the draft Model which resulted in some changes to the draft. The draft was considered by the Audit Committee at its meeting on the 30<sup>th</sup> of July and authorised the then Monitoring Officer to respond to the consultation on behalf of the authority.

- 2.2 The Model Code, which was finalised and released on the 23<sup>rd</sup> December 2020, incorporates the Committee on Standards in Public Life recommendations on Local Government Ethical Standards and representations from its membership. Part of the CSPL recommendations was the introduction of sanctions for breaches of the code, alongside an appeals process but this aspect was outside the scope of the LGA consultation as it requires legislative changes by Government.
- 2.3 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. A summary of the some of the elements of the Model Code which is appended to this report are set out below, but the Monitoring Officer would reassure members that the Model Code, with its explanations and definitions appears to be an intuitive document.

### 2.4 When Does the Code Apply?

The code will apply to members when they are acting in their capacity as a councillor, misuse their position as a councillor or their actions would give the impression to a reasonable member of the public with knowledge of all of the facts that one is acting as a councillor. The latter aspect is one of the most difficult for members of the public to understand as there is a perception that councillors are always ‘on duty’, that is that members are bound by the Code at all times. This has gained prevalence in recent times due to the impact of social media.

- 2.5 The legal position at present is that under the Localism Act, the code can only apply when the member is acting in the capacity of an elected councillor. Many codes reflect the definition set out in the old model code and extend the applicability of the Code to cover situations where a member is acting or appearing or purporting to act as a member or representative of the Council. This is intended to cover the ‘don’t you know who I am’ situation, which is thankfully rare, but there is a clear gap in the

law with many codes being 'stretched' to include application to members where the law may not permit, particularly as a consequence of social media activity. There are of course shades of grey as to when a member is acting in that capacity and the CPSL recognised this which is why it recommended that there should be a rebuttable presumption that the person is acting in the capacity of a member unless they demonstrate that they were not. However, this would require a change in the law.

2.6 It is the view of the Monitoring Officer that the Model Code would be unlikely to withstand legal challenge to the Code being extended to giving the impression to a member of the public that one is acting as given the current statutory position. The likelihood of challenge is small, but if there is a change in the law to allow suspension for up to 6 months, then the stakes for members will be far higher. If adopted, the Monitoring Officer will apply the Code in accordance with the Localism Act and will take a purposive and pragmatic approach.

2.7 The Code will apply to all forms of communication and interaction. This is intended to cover the increase in use of social media by members and that there is sometimes confusion as to whether members are acting in their official capacity when operating outside of formal Council processes, for example on social media.

## 2.8 Content of the Code

The CSPL recognised 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. The requirements should also be enforceable: codes should not include provisions such as 'councillors must be aware of...'"*

The Code adopted by the Council does not comply with the requirements of the CSPL in that it does not tell councillors what they should or should not do. Furthermore, it does not cover a number of aspects that one would expect to see in a Code such as a prohibition on bullying and harassment, bringing the office of councillor or the Council into disrepute or maintaining confidentiality.

2.9 The CSPL issued 15 best practice recommendations (which are appended to the Model Code), one of which was that the Code of Conduct should provide definitions of bullying and harassment. These are now contained in the Model Code.

2.10 The Model Code introduces the requirement to treat other councillors, officers and members of the public with respect. This does not prevent councillors from having a viewpoint and there will still be the ability to express challenge or disagree with opinions, but the line is rightly drawn at personal attack. It will be interesting to see how the Code stands up to judicial scrutiny in terms of freedom of expression, which preserves the right to hold and express views which may be disagreeable or even offensive to certain sections of the public. The Monitoring Officer will provide

guidance to members during training which, whilst not mandatory, he would recommend all members to attend.

- 2.11 There is the introduction of a definition of bullying and harassment as mentioned above. A prohibition on bullying and harassment is found in most Codes, but the Model Code introduces the definitions required by the CSPL.
- 2.12 There are further requirements around gifts and hospitality to make the position around perception of undue influence clearer.
- 2.13 Declaration of interests has been clarified. Disclosable Pecuniary Interests are set by Regulation so cannot be altered and remain the same as before. However, the Code re-states the position in relation to other interests which are now referred to as other 'registrable' interests which are set out in Table 2 of the Code.
- 2.14 There is a fundamental change to the approach to interests other than DPI's in that the concepts of financial interests which are not DPI's and of well-being have been introduced.
- 2.15 The best way to summarise the change is that they reflect what used to be known as prejudicial interests prior to the introduction of DPI's. The concept of personal and prejudicial interests has remained unchanged in the Welsh Model Code as it was not impacted by the Localism Act. However, members will note that the definition of other interests in Table 2 is almost identical to the existing Code, it is just the actions to be taken which will change.
- 2.16 The Monitoring Officer will be providing training on the Model Code and as such, the implementation will be delayed until the 1<sup>st</sup> March to allow members to familiarise themselves with the Model Code and to attend the training.

### **3. Independent Persons**

The Localism Act 2011 (Section 28) requires a relevant authority to have in place arrangements under which allegations made under the Code of Conduct can be investigated, and under which decisions on allegations of breaches of the Code can be made.

- 3.1 The arrangements must include provision for the appointment of at least one independent person whose views must be sought, and taken into account before any decision is made on an allegation that it has been investigated. The views of the Independent Person may also be sought at other stages of the process and most authorities refer complaints to the Independent Person at an early stage in the process and particularly when the Monitoring Officer is carrying out an initial assessment of the complaint.
- 3.2 It is also now customary for a different Independent Person to provide assistance to members who are the subject of complaints under the Code. As such, the approach

is to appoint at least two Independent Persons. There are certain requirements set out in the Act in summary, these are that an Independent Person may not be a current or past (within 5 years):

- member, co-opted member or officer of the authority,
- member, co-opted member or officer of a parish council of which the authority is the principal authority, or
- relative, or close friend, of a person referred to above

3.3 The Audit Committee will be considering a review of the arrangements for investigating complaints at its meeting later in January with a view to recommending it to Council for adoption.

3.4 The authority has already appointed one Independent Person, namely Mr Michael Paget-Wilkes who is also a member of the Independent Remuneration Panel. As the best practice recommendations require at least two Independent Persons, the Monitoring Officer has approached the Independent Persons appointed by Stroud District Council. Both Phyllida Pyper and John Acton have agreed to assist Cotswold District Council and a brief CV for each is set out in Appendix One. The Monitoring Officer has discussed this approach with the Chair of Audit Committee given its responsibility for standards issues.

3.5 The appointments are being made to ensure that the authority has sufficient provision and are essentially an interim arrangement pending a review of the processes and to enable the Model Code to bed in. Therefore, the appointments are for a maximum of one year.

### 3.5 Remuneration

It is lawful to pay Independent Persons an allowance and payment does not affect their independence. It is extremely difficult to attract interest for the role of Independent Person and the work can be quite time consuming depending on the nature of the complaints received. Therefore, it is recommended that an allowance of £1,000 per annum is paid, which will be paid monthly.

## 4. **FINANCIAL IMPLICATIONS**

4.1. There will be an all-inclusive allowance payable to each Independent Person in the sum of £1,000 per annum and therefore a total financial commitment of £3,000 per annum.

## 5. **LEGAL IMPLICATIONS**

5.1. All legal implications have been set out in the body of the report.

## 6. **EQUALITIES IMPACT**

6.1. There are no equalities implications arising from the recommendations made in this

report.

**7. ALTERNATIVE OPTIONS**

- 7.1. No alternative options have been considered, however, the Council could retain the current Code of Conduct. This is not recommended as the Monitoring Officer is of the view that it is no longer fit for purpose.

**8. BACKGROUND PAPERS**

None.

(END)