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LGA's response to the findings of the consultation on the draft Model Member Code of Conduct

In June 2020 the Local Government Association (LGA) conducted a consultation to gather views on its draft 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. Responses to the consultation were gathered through an online questionnaire as well as by email via a dedicated inbox.

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Introduction

1. The LGA would like to thank all those who took the time to respond to the consultation and who took part in the webinars. We received around 1600 individual responses to the consultation and around 800 people participated in the webinars. We would particularly like to thank those who discussed and debated the draft code and the consultation with their councils.
2. The LGA is a politically-led, cross-party organisation that works on behalf of councils to ensure local government has a strong, credible voice with national government. We aim to influence and set the political agenda on the issues that matter to councils so they are able to deliver local solutions to national problems. We, as the LGA, have developed this code for and on behalf of councils.
3. The LGA undertook the review of the Code as a means to help councillors effectively fulfil their role. We want to emphasise that making a complaint using the Code should be seen as a last resort rather than a first port of call. We support having a positive and early discussion about the Code as part of initial training for councillors,

helping councillors understand how it can be used, what happens should a complaint be made, and where they can go for help. We would encourage councillors to speak to their Monitoring Officer should there be any queries related to the Code and for a positive relationship to be fostered. The LGA has offers on leadership training and support, as well as Peer support and councillor development, and we deliver specific events on many issues, including social media and civility in public life. We also have many useful guides including handling intimidation, top tips on social media, etc. We also advocate the use of mediation in addressing concerns and can support you in this as well.

Summary of the key issues from the consultation

4. The predominant issues that arose from the consultation on the draft code of conduct are:

- Ensuring the presentation is clear and that we use plain English. We also need to be clear what is within the current legislative framework and what has been proposed by the Committee on Standards in Public Life.
- Civility is not word universally used and could give rise to confusion. The recommendation is to use the word respect instead.
- When a councillor is acting as a councillor and when they are acting in a private capacity. This has led to much debate, with a general conclusion that a councillor is acting as a councillor if they introduce the fact that they are a councillor into a discussion or dispute. We will be exploring this further in the accompanying guidance for councillors.
- That the code should reflect the importance of the Equalities agenda.
- The importance of social media and that we need more emphasis in the code. This is particularly important because of the move to online meetings and online communication as the main tool of engagement with residents and officers during the COVID-19 pandemic.
- A strong request for supporting guidance.
- A strong discussion on the use of the first person (I) and the third person (councillors should). There are concerns that the use of the first person will make implementing the code more difficult and that the code would be less accessible to the general public. However, LGA leadership is keen to keep the first person, to emphasise that the code is for councillors to use to support them in their role.
- Reflections on gifts and hospitalities. There was a case made that it should not be an assumption that the role of councillor involves accepting gifts, as this could threaten the reputation of local government. It was emphasised that a distinction between gifts and expenses paid in kind as part of a councillor's role should be made. In order to protect the reputation of the local authority, the case was made to

assume a presumption against the general acceptance of gifts, but that where gifts are accepted, gifts of above £50 should be declared.

- That there should be a specific obligation to cooperate with an investigation or process.

Review of the responses

5. We had an excellent response from Town and Parish councils, and we want to thank NALC for promoting the consultation to their members. We took on board that some of the language used in the draft Code could cause confusion to Town and Parish councils or alienate them because it was not clear that the Code would also apply to them. As such, we are consistently using the word 'councillor' and have set out a definition for this, which includes co-opted Town and Parish Councillors. We have also changed the title of the Code so that it is "Model Councillor Code of Conduct" rather than "Model Member Code of Conduct". This is to ensure we are including Town and Parish Councillors and to make it more understandable to the general public, where the term 'member' may have multiple meanings. We are also referring to 'local authorities' to ensure we include bodies such as the National Parks. In the accompanying guidance we are developing to support the Code, we want to ensure we include issues relevant to Town and Parish councils.

Question 1 – Application of the Code

6. Whilst there was overwhelming support for the draft code's definition of when the code applies, we are aware that this issue has caused considerable debate. Given both the support from the consultation and feedback from the LGA's Leaders, Executive Advisory Board and Councillors' Forum, the LGA will be retaining the proposed text. We have sought to make it clearer through the use of bullet points.

7. Part of the discussion on this point is the use of social media. The LGA understands that social media is an important medium for candidates and councillors to reach their local residents and set out their position on key issues. We know it is also used in a personal capacity as part of a private life. Based on feedback and good practice, the rule of thumb is that in a private account no reference should be made to any knowledge you may have as a councillor or reference the fact you are a councillor. At the same time, you are encouraged, as everyone is, to regard yourself as a digital citizen when making comments online, and to consider the wider ramifications of any comments made on an internationally public medium. More information on managing social media is available in the LGA's top tips on social media and the LGA's guide for councillors on handling intimidation (which includes keeping yourself safe online). In response to the very strong feedback in the

consultation for additional guidance on social media, the LGA will be developing a specific guide for councillors on social media and digital citizenship. The LGA's digital inclusivity programme and remote meetings hub also provides support and information on managing a councillor's online presence.

Q2 – Clarity in the Code

8. It was clear from the consultation responses that we hadn't made it clear enough in the code which parts of the code were legal requirements, obligations and guidance. In reflecting on this question, we also want to make the case that all the obligations are equally important, and that because one obligation may be in statute, that it does not outweigh the other obligations. But we have referenced the statute where it is relevant, particularly in terms of the register and declaration of interests. We have also changed the layout of the code to make it clearer which are overarching principles of conduct, and where a complaint can be made against you under the code.

Q3 – Wording of the Code

9. The issue of whether the Code should be telling councillors what their behaviour should be – “councillors should” – or whether the Code should be what a councillor personally takes on board and agrees to as their behaviour – “I will” – was clearly splitting opinion. A fundamental principle of the LGA taking the decision to revise the code of conduct was that it should be about supporting councillors to adopt positive behaviours, rather than creating a tool to be used by others. The LGA also thinks this is important in improving the reputation of the Code of Conduct amongst councillors and improving trust in how it is used. As such, the LGA has decided to continue to use the personal tense “I”. We have removed “will” and instead ‘personalised’ each of the obligations. This is to be clear that the behaviours are not something to be adopted in the future, but to be adopted as soon as a councillor is elected or co-opted.

Q4 – The obligations

10. The consultation demonstrated the significant general support the LGA has for the proposed obligations, which we hope reflects the work we have undertaken with the sector to develop them. We did take into account comments regarding clarification of elements of the obligations, which we have sought to improve.

Q5 – Additional or alternative obligations

11. With regards to the obligation on gifts and hospitality, the LGA received strong representation on the impact that the acceptance of gifts and hospitality can have on the perception of the role of councillor, particularly by the general public. At the same time, it is important that councillors are able to carry out their role, which may include

working with the local business community. It is also inevitable that councillors will participate of some hospitality as part of their role in being a councillor, and that they will incur expenses. As such, we have extended this obligation to state that there should be an assumption that gifts and hospitality should not be accepted, unless it would be considered rude not to or if they are part of legitimate councillor expenses. Where gifts are accepted, then those over £50 should be declared. However, all gifts of a significant value and refused should be registered with the Monitoring Officer. This is primarily to help protect the reputation of the councillor, and by extension all councillors.

12. We took on board the comments regarding the terminology around civility and respect, and we have used the term 'respect' in obligation 1.

13. We have specifically included reference to employees of the local authority in obligation 3.

14. We have reworded obligation 5 to be clear that disrepute refers to the behaviour of the councillor and how by extension it could bring the role of councillor and the local authority into disrepute. We have clarified that it does not prevent a councillor from holding the local authority to account, and that councillors can constructively challenge decisions and processes and raise concerns.

15. We have provided more detailed text with regards to confidential information.

16. We have added a new obligation to undertake training.

17. We have added an obligation for councillors to promote equality. The LGA is firmly committed to promoting equality and tackling inequalities.

18. We have added an obligation to comply with an investigation. Alongside this, we have added an obligation on accepting the determined sanctions. In order to support councillors in this area, we will be setting out in the guidance what councillors should expect in terms of the process of having a complaint made against them and how a decision is taken. This includes the role of the Monitoring Officer and the Independent Person.

19. We have taken the decision not to include an obligation on vexatious complaints. We were concerned that this may lead to a cycle of complaints should an original complaint not be upheld. However, we will be including the making of complaints in the guidance and will look at this issue again in our annual review.

Q6 – List or guidance

20. The results of the consultation demonstrated a preference for the style of having the obligation followed by a brief explanation, and as such the LGA will be retaining this style of presentation.

Q7 - Civility

21. Whilst there was a great deal of support for the term 'civility', the LGA has considered the use of plain English and has taken on board the comments highlighting that civility is not commonly used these days and by extension could create ambiguity. As such, we have decided to use the term 'respect' as proposed by the responses to the consultation.

Q8 – Disrepute

22. Whilst there was significant support for this obligation, the concept of 'disrepute' has also been an area of keen discussion. As such, we have modified the short guidance on this obligation to clarify that this is in relation to the councillor's behaviour, and not for raising concerns about decisions, procedures or processes of the local authority. It is important for a councillor to be able to raise concerns about decisions, etc, in order to hold that local authority to account.

23. The list of possible behaviours that could bring the local authority into disrepute is not exhaustive, as another call was for the main code to be as succinct as possible. We will be setting out more information in the subsequent guidance on the code.

Question 9 – Bullying and harassment

24. The LGA has adopted the ACAS definition of bullying as the most widely recognised definition. We have reviewed the wording to be clear that bullying does not just apply to the protected characteristics under the Equalities Act. We do think it is useful to point out in the guidance that there are such things as protected characteristics, and abuse, discrimination or harassment under these categories are currently against the law.

Question 10 – Social media

25. Concerns about social media have been a strong and recurrent theme throughout the consultation. The current COVID-19 pandemic has meant councillors are using social media more than ever before, with remote meetings taking place with chat functions and communication with residents being made via social media.

26. We have increased reference to social media within the code, particularly acknowledging councillors use of remote meetings software, etc. We will not be producing a separate code for social media use, as the code itself applies to conduct whilst on social media. We will be producing further guidance to help councillors use and navigate social media, looking at digital citizenship and the application of the code to the online environment.

Q11 - 13 – Registration and declaration of interests

27. The proposals to extend the requirements around declaration were developed with a view to helping councillors protect their reputation and avoid challenge that undermines public trust in local decision-making. The response to the consultation broadly supported extending the requirements, but asked for additional guidance and support, and that it should also be reasonable. This will be a key area covered in more detail in the forthcoming code guidance, and we are appreciative of the suggested areas for guidance which we will be considering further and in detail.

28. The obligation to declare is within the main body of the code, with a short explanation. The further detail is within appendix B to the code to allow for a greater level of detail.

Q14-15 – Gifts and hospitality

29. As set out above, this obligation created some discussion. This is another area we will be exploring more in the guidance. Councillors are always encouraged to consult their Monitoring Officer if they are unsure whether to declare or not, and to ascertain whether a gift would be considered 'significant'.

Q16 – Guidance

30. The response to the consultation was very clear that additional guidance would be welcomed. The LGA will produce a guide on the Code which will include explanations, scenarios, case studies, etc. It will also set out, based on good practice, what a councillor should expect in terms of model procedures and processes if they either make a complaint using the code or have a complaint made against them. We will also look how the guide can be most effective, including whether we create e-learning modules and/or training. We will be consulting with NALC and SLCC to ensure the guidance supports Town and Parish councils.

Q17 – Other areas

31. The most frequent issues that were raised were the role of the Monitoring Officer, processes when a complaint is made, appeals and sanctions.

32. We have included in the Code greater reference to the Monitoring Officer and an encouragement to consult them. The guidance on the Code will set out more information for councillors on the role of the Monitoring Officer.

33. We had several questions and comments regarding the processes and procedures Monitoring Officers undertake when they are assessing and acting on a complaint under the Code of Conduct. We will seek to work with the sector to set out for councillors what they should expect if they make a complaint or a complaint is made against them under the Code. We hope this will help councillors understand and navigate the process. We think, given that the LGA has developed this Code, that it is important to help councillors understand how it will be implemented.

34. There is currently no formal process for appealing a decision made under the Code of Conduct, and equally there is no formal set of sanctions that can be applied. The Committee on Standards in Public Life recommended that the Local Government Ombudsman be formally given the role of managing appeals under the Code of Conduct, and that sanctions be introduced which include the option to suspend a councillor for up to 6 months. As the LGA, we determined to press ahead in our review of the Model Code of Conduct rather than wait for Government to formally respond to the recommendations and for legislation to change. Government has not as yet responded to the Commission. We will be writing to Government upon sign-off of the LGA's Model Councillor Code of Conduct to encourage a response to the Committee's recommendations and to take into account the LGA's consultation on the Code. The LGA will also be reflecting on the comments made in the consultation on these important issues as we continue our work in this area.

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