

# Crawley Borough Council

## Report to Governance Committee

21 September 2021

### LGA Model Councillor Code of Conduct

Report of the Monitoring Officer – LDS/164

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#### **1. Purpose**

- 1.1. The purpose of this report is to put before the committee the Local Government Association's (LGA) Model Councillor Code of Conduct ("Model Code") so the Committee can consider whether to adopt it in full or in part, or to retain the Council's current Code of Conduct for Councillors ("Code of Conduct").

#### **2. Recommendation**

- 2.1. That the new LGA Model Councillor Code of Conduct is not adopted.
- 2.2. That the Council's current Code of Conduct and Procedure for Dealing with Code Complaints be reviewed by the Head of Legal, Governance & HR and that a revised code be presented to the Governance Committee on 25 January 2022. This may incorporate specific elements of the LGA Model Code.
- 2.3. That timetable set out at Section 7 report be approved.

#### **3. Reasons for the Recommendation**

- 3.1. To ensure that the Council's Code of Conduct is fit for purpose.

#### **4. Background**

- 4.1. The Council's Code of Conduct was not reviewed as part of the Council's Constitution review in 2019 as the LGA was working to produce a new Model Code of Conduct at the time. It was decided that the Council would review its Code of Conduct once the new Model Code had been published.
- 4.2. On 19 January 2021 the LGA issued the new Model Code (attached as Appendix A). The LGA guidance on the application of the Model Code was originally due in March 2021 but was delayed until July 2021. Adoption of the Model Code is 'strongly recommended' by the LGA and the National Association of Local Councils.
- 4.3. The Council is required to have a Code of Conduct and currently has one in place. There is no legal requirement for the Council to adopt the new LGA Model Code.

## 5. Review

- 5.1. The Monitoring Officer does not recommend adopting the new LGA Model Code. The Committee is asked to consider its contents and decide whether it wishes to adopt any part(s) of the Model Code. These views will then be taken forward as part of the Monitoring Officer's review of the Council's Code of Conduct.
- 5.2. It is not considered appropriate to adopt the new LGA code or propose a revised Council Code in the middle of the municipal year. It would be more appropriate for the Monitoring Officer to review the Council's code between October and December and to look to put a proposal to Governance Committee (25 January) and the Full Council (23 February) early next year with the view to the revised code coming into effect in time for the new municipal year 2022/23. This will provide a clear transition date and can be built into the training for new Councillors post-election.
- 5.3. The Monitoring Officer also intends to review the Procedure for Dealing with Code of Conduct Complaints and to bring a revised procedure to Governance Committee in January 2022.

## 6. Comparative Analysis

- 6.1. The Model Code presents as being clearer and easier to read and therefore more understandable and potentially more enforceable. This more concise style would seem to fit the ethos of Council's Constitution (as revamped in 2019). It is also clearer on issues associated with social media which can be a problematic area.
- 6.2. On a practical level, as it was written with the LGA, Association of Democratic Services Officers (ADSO) and the Committee on Standards in Public Life there will be a lot of freely available training and guidance documents for Councillors on the new Code.
- 6.3. The Council's current Code is a robust document so does not need to be replaced. However, it is acknowledged that there are some positive aspects in the LGA Code which can be added to the Council's Code.
- 6.4. For ease of reference the following comparisons have been drawn between the Council's current Code of Conduct and the Model Code:

Topic	CBC current Code	New LGA Model Code	Monitoring Officer Preference
Point of View	Written in second person	Written in first person  LGA wanted Councillors to 'take ownership' of the Code; written as a contract between Councillor and public.	CBC Code
When the Code Applies	When acting or 'appearing to act' in an official capacity  2.1 'You must comply with this	Employs a 'reasonable person' test, and applies when a matter/situation/subject relates to a Council function or Council business  Applies when 'Your actions would give the impression to a reasonable member	LGA Code

Topic	CBC current Code	New LGA Model Code	Monitoring Officer Preference
	<p>Code whenever you <i>act or appear to act</i> in your official capacity as a Councillor’.</p> <p><b>Does not list specific types of communication to which the Code applies</b></p>	<p>of the public with knowledge of all the facts that you are acting as a councillor’.</p> <p><b>The Code applies to specific types of communication (includes social media)</b></p> <p>‘The Code applies to all forms of communication and interaction, including:</p> <ul style="list-style-type: none"> <li>• at face-to-face meetings</li> <li>• at online or telephone meetings</li> <li>• in written communication</li> <li>• in verbal communication</li> <li>• in non-verbal communication</li> <li>• in electronic and social media communication, posts, statements and comments.’</li> </ul>	LGA Code
<b>Definition of Harassment</b>	<p><b>Defined by the Equality Act 2010</b></p> <p>3.5 Harassment is defined as “unwanted conduct” which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.</p>	<p><b>Defined by the Protection from Harassment Act 1997</b></p> <p>2. The Protection from Harassment Act 1997 defines harassment as conduct that causes alarm or distress or puts people in fear of violence and must involve such conduct on at least two occasions. It can include repeated attempts to impose unwanted communications and contact upon a person in a manner that could be expected to cause distress or fear in any reasonable person.</p>	CBC Code
<b>Disrepute</b>	<p><b>Behaviour is arguably down to personal interpretation</b></p> <p>3.9 You must not <i>conduct yourself in a manner which could reasonably be regarded as</i> bringing your office or authority into disrepute.</p>	<p><b>Stronger/more concise wording</b></p> <p>5.1 I do not bring my role or local authority into disrepute.</p>	CBC Code

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<p><b>Use of Resources</b></p>	<p><b>Not explicitly stated – Councillors’ use of resources aligns with the Council’s definition</b></p> <p>3.11 (i) Act in accordance with your authority's reasonable requirements.</p>	<p><b>Stronger/more concise wording, but not CBC specific</b></p> <p>7.1 I do not misuse council resources.</p>	<p>CBC Code</p>
<p><b>Compliance with the Code</b></p>	<p><b>Two of the four points in the new Model Code regarding compliance are not currently covered</b></p> <p>3.6 You must not intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in any investigation or proceedings about a complaint that a Councillor (including yourself) has failed to comply with their Authority’s Code of Conduct. If a Code of Conduct complaint is referred for an Investigation, there will be an obligation on the Councillor to comply with any formal standards investigation.</p>	<p><b>The two points in italics below are not covered in CBC Code. LGA aimed to emphasise that training on the Code be a requirement. It was also deemed essential that the Code ‘have teeth’ in terms of ensuring compliance with code of conduct sanctions</b></p> <p><i>8.1 I undertake Code of Conduct training provided by my local authority.</i></p> <p>8.2 I cooperate with any Code of Conduct investigation and/or determination.</p> <p>8.3 I do not intimidate or attempt to intimidate any person who is likely to be involved with the administration of any investigation or proceedings.</p> <p><i>8.4 I comply with any sanction imposed on me following a finding that I have breached the Code of Conduct.</i></p>	<p>CBC Code with 8.4 from LGA Code in 2<sup>nd</sup> person</p>
<p><b>Gifts and hospitality</b></p>	<p><b>CBC Code does not include gifts and hospitality protocol – this is set out separately in the Constitution,</b></p>	<p><b>The content below more or less reflects CBC’s current policy – but it is not set out in the Code itself</b></p> <p>10.1 I do not accept gifts or hospitality, irrespective of estimated value, which</p>	<p>Move the Gifts &amp; Hospitality provisions into the</p>

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	<p><b>but not specifically in the Code</b></p> <p>3.1 The Bribery Act 2010 provides that if you accept any gift, loan, fee, reward or advantage whatsoever as an inducement or reward for doing or forbearing to do anything in respect of any matter or transaction in which the Council is concerned, you commit a criminal offence carrying a maximum term of imprisonment of 10 years or a fine or both.</p> <p>3.2 Under the Code of Conduct Councillors must register as a Personal Interest the receipt of any gift or hospitality with an estimated value of £50 or more received within the last three years. This must be done within 28 days of its receipt / acceptance.</p> <p>3.3 Councillors in any event are required to complete a Form of Declaration of receipt / acceptance of any gift or hospitality including refusal.</p>	<p>could give rise to real or substantive personal gain or a reasonable suspicion of influence on my part to show favour from persons seeking to acquire, develop or do business with the local authority or from persons who may apply to the local authority for any permission, licence or other significant advantage.</p> <p>10.2 I register with the Monitoring Officer any gift or hospitality with an estimated value of at least £50 within 28 days of its receipt.</p> <p>10.3 I register with the Monitoring Officer any significant gift or hospitality that I have been offered but have refused to accept.</p>	<p>actual CBC Code.</p>

## 7. Timetable

21 September	Outline report to Governance Committee which may indicate any specific elements of the new LGA Code which it would like incorporated into the revised Council Code
October – December	Monitoring Officer will undertake a review of the Council's existing code and explore the inclusion of specific element(s) of the new LGA Code  Monitoring Officer will also review for dealing with Code of Conduct Complaints
25 January 2022	Final report to Governance Committee with a revised Council Code and Procedure for Dealing with Code Complaints for consideration and potential referral to the Full Council
23 February 2022	Revised Council Code and Procedure for Dealing with Code Complaints for consideration and adoption by the Full Council
9 May 2022	Revised Council Code and Procedure for Dealing with Code Complaints comes into effect
After 9 May 2022	Appropriate training for Councillors

## 8. Legal and Financial Implications

- 8.1. There is no legal requirement for the Council to adopt the LGA Model Code.
- 8.2. There are no financial implications.

## 9. Background Papers

- Appendix A: LGA Model Councillor Code of Conduct 2020
- Appendix B: Crawley Borough Council's current Code of Conduct for Councillors

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