

TONBRIDGE & MALLING BOROUGH COUNCIL

GENERAL PURPOSES COMMITTEE

31 JANUARY 2022

Report of the Monitoring Officer

Part 1 - Public

Matters for recommendation to Council

1 REVIEW OF CODE OF CONDUCT

Summary

This report invites Members to consider revisions to the existing Code of Conduct, in light of the Model Code of Conduct produced by the Local Government Association

1.1 Introduction

1.1.1 In 2018 the Committee on Standards in Public Life (CSPL) launched a review into ethical standards in local government. The review had the following terms of reference:-

- i. Examine the structures, processes and practices in local government in England for:
 - Maintaining codes of conduct for local councillors
 - Investigating alleged breaches fairly and with due process
 - Enforcing codes and imposing sanctions for misconduct
 - Declaring interests and managing conflicts of interest
 - Whistleblowing
- ii. Assess whether the existing structures, processes and practices are conducive to high standards of conduct in local government;
- iii. Make any recommendations for how they can be improved;
- iv. Note any evidence of intimidation of councillors, and make recommendations for any measures that could be put in place to prevent and address such intimidation

1.1.2 This CSPL published its report in January 2019. The report, which ran to over 100 pages made 26 recommendations. These were reported to the Joint Standards Committee on 12 June 2019, with a further update on progress made with implementing the recommendations on 12 October 2020.

1.1.3 The first recommendation of the CSPL related to the Code of Conduct for elected members :

“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”

1.1.4 The CSPL found in relation to codes of conduct that there was considerable variation in the length, quality and clarity of codes of conduct and considered that this created confusion among members of the public, and among councillors who represent more than one tier of local government. The CSPL considered that many codes of conduct failed to address adequately important areas of behaviour such as social media use and bullying and harassment. The CSPL therefore recommended that an updated model code of conduct should be made available to local authorities in order to enhance the consistency and quality of local authority codes.

1.1.5 The CSPL considered, however, that there were benefits to local authorities being able to amend and have ownership of their own codes of conduct. The updated model code should therefore be voluntary and able to be adapted by local authorities. There was also a specific recommendation that the scope of the code of conduct should also be widened, with a rebuttable presumption that a councillor’s public behaviour, including comments made on publicly accessible social media, is in their official capacity.

1.2 The LGA Model Code

1.2.1 In response to the recommendation of the CSPL, a new voluntary model Members’ Code of Conduct was published by the Local Government Association during 2020. A copy of the model code is attached as **Annex 1**. The LGA has also produced supporting guidance to the model code, which can be viewed at [Guidance on Local Government Association Model Councillor Code of Conduct | Local Government Association](#)

1.2.2 The existing Tonbridge & Malling Code is also attached as **Annex 2**, with a table comparing the differences between the codes at **Annex 3**.

1.2.3 Members are asked to note the following key points in respect of the model code:-

- The model code introduces the concept of treating other Councillors, members of the public, staff and representatives of partner organisations with ‘respect’ whilst acknowledging the need to be able to engage in debate in a civil manner. This is consistent with the LGA’s Civility in Public Life programme.
- The model code makes it a requirement to comply with any sanction imposed following a finding that the code has been breached. At present as members will be aware sanctions for breach of the Members’ Code of

Conduct are very limited. The CSPL recommended the Government change the law to allow Local Authorities the power to suspend councillors, without allowances, for up to six months (exercisable only where the authority's Independent Person agrees both with the finding of a breach and that suspending the councillor would be a proportionate sanction). As indicated above the government has yet to respond to this proposal.

- The model code sets the threshold for registration of gifts and hospitality at £50 (the threshold in the Kent code is £100).

1.3 Review of the LGA Model Code

1.3.1 Since its publication, the Code has been subject to detailed consideration by Kent Secretaries (a Kent-wide group of Monitoring Officers at all Districts plus Medway Council and Kent County Council). A working group of Kent Secretaries has reviewed the Model Code, with a view to establishing whether it would be preferable to adopt the new Model in its entirety or whether it would be better to modify the existing Kent Code to reflect some elements of the Model. In the view of the working group the latter of these options was more appropriate, with the group then working on specific changes to the Kent Code.

1.3.2 A copy of the revised Kent Model Code is attached at **Annex 4**. A separate (revised) version of the Kent Code, tailored for use by Town and Parish Councils, is attached as **Annex 5**. A copy of the latter has already been sent to the Clerks of all Town & Parish Councils within the Borough so that their respective Councils may consider in more detail.

1.3.3 Members are asked to note the following principal changes to the Kent Model Code:-

- **Para 2(2) (Scope)** – new addition to clarify that the code applies to all forms of communication and interaction including social media;
- **Para 3(2)(a) (General Obligations)** – addition of harassment, and inclusion of ACAS definition of bullying;
- **Para 3(2)(e) (General Obligations)** – addition of specific obligation not to disclose exempt (part 2) papers;
- **Para 3(3) (General Obligations)** – new addition to clarify that the absence of training cannot be used as a defence to a complaint under the Code;
- **Annex 1 (Seven Principles of Public Life)** – updated definitions

1.4 Financial and Value for Money Considerations

1.4.1 None arising out of this report.

1.5 Legal implications

- 1.5.1 Under the Localism Act 2011 the Council is under a duty to promote and maintain high standards of conduct and to adopt a Code of Conduct for its elected Councillors based on the principles of standards in public life. Parish and Town Councils are also under the same duty, but they may comply by adopting the Code of the Borough Council (as principal authority). Alternatively, Parish and Town Councils may choose to adopt their own Code. A number within Tonbridge & Malling have chosen to adopt the model code produced by the National Association of Local Councils (NALC).
- 1.5.2 The Council must publicise its adoption, revision or replacement of its Code of Conduct in such a manner as it considers is likely to bring the adoption, revision or replacement of the Code to the attention of persons who live in the Borough. It is proposed that any revised Code would be published on the Council's website.

1.6 Risk Assessment

- 1.6.1 It is important that a robust system exists for the promotion and maintenance of high standards of conduct. The absence of such a framework will lower public confidence in the democratic process.

1.7 Equality Impact Assessment

- 1.7.1 The issues detailed in this report have a remote or low relevant to the substance of the Equality Act. There is no perceived impact on end users.

1.8 Recommendations

- 1.8.1 It is **RECOMMENDED** that the Council adopts the revised Code of Conduct at Annex 4.

contact: Adrian Stanfield

Background Papers: none