

LGA Consultation on Draft Model Code

Q1. To what extent do you support the proposal that councillors demonstrate the behaviours set out in the Code when they are publicly acting as, identifying as, and/or giving the impression that they are acting as a councillor, including when representing their council on official business and when using social media?

- ~~To a great extent~~
- To a moderate extent
- ~~To a small extent~~
- ~~Not at all~~
- ~~Don't know/prefer not to say~~

This appears to offer a reasonable scope for the Code to apply, subject to the observations at 1(a) below.

[Note – The Localism Act would need amending to allow this (currently the law only catches conduct when acting in an official capacity)]

Q1a. If you would like to elaborate on your answer please do so here:

The County Council's Code has always applied when a member is acting in their capacity as a member and when representing or conducting the business of the Authority. The addition of the words 'giving the impression they are acting' is considered a sensible and reasonable return to the position that existed pre the Localism Act 2011. Any purported, as well as actual, use of their office by a councillor should require adherence to the code and any presumption made that a councillor is so purporting to act is and should be rebuttable.

Extending the Code to capture all public behaviour of a member would go further than the current position and that of pre the localism Act. The County Council believes this is matter on which political groups are best able to comment.

Regarding the application of the Code generally, a common approach is needed, and a single section should reference when the Code in its entirety applies to ensure consistency in its application and avoid confusion. One purpose of introducing a model code would be to introduce greater uniformity and clarity across all tiers of local government. However, references to when the code will apply which are scattered around the document are confusing and greater clarity is needed to avoid significant differences in interpretation.

For example:

- Inclusion of the words “you are expected to uphold high standards of conduct and show leadership **at all times**” is ambiguous and could be interpreted as going further than CSPL’s recommendation and is inconsistent with the section entitled ‘Application of the Code’. Clarity is needed on whether this means the Code will apply at all times when a councillor is in public and/or when acting/giving the impression they are acting as a councillor, or ‘at all times’ in a councillor’s life. The latter would suggest the Code would apply to their personal and private life, not just their public conduct.
- There appears to be a separate distinction regarding the application of ‘The Seven Principles of Public Life’ - some principles are stated to apply on ‘all occasions’ but it is not clear based on the wording quoted above, what ‘all occasions’ is intended to mean. The other principles are stated to only apply when the councillor is ‘undertaking their role’.
- The wording around capacity under ‘Specific obligations of general conduct’ is slightly different to that under the ‘Application of the Code’ section which could create further confusion.
- It is not clear what the difference is between the 9 bullet pointed statements at the top (right hand side) of page 3 [‘I will...’ Etc.] and the specific obligations of general conduct [‘I commit...’] etc. which start at page 4.

Q2. Is it sufficiently clear which parts of the Model Code are legal requirements, which are obligations, and which are guidance?

- Yes
- No
- Don’t know

This could be made explicit by use of terminology ‘must’ and ‘should’ to distinguish between legal requirement and guidance. There should be an explicit reference to anything that is a legal requirement with detail in the footnote of the relevant statutory provision for clarity.

Q3. Do you prefer the use of the personal tense, as used in the Code, or would you prefer the passive tense?

- Personal tense (‘I will’)
- Passive tense (‘Councillors should’)
- No preference

Q4. To what extent do you support the 12 specific obligations?

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know/Prefer not to say

Q5. If you would like to propose additional or alternative obligations, or would like to provide more comment on a specific obligation, please do so here:

The following elements are not included but are currently captured by the Leicestershire County Council Code and the Authority would wish to see these added:

- A requirement to treat **all** people with respect. A requirement to treat fellow elected councillors and employees etc. with civility and otherwise not to bully and harass people generally is insufficient.
- A specific requirement that members should abide by all equality enactments and not breach or cause the Authority to be in breach of such enactments. Reference to equality is only referenced in the obligation not to bully and harass a person and this is too narrow and does not obligate positive action to support equality.
- An obligation not to use an Authority's resource for political gain and a requirement that when using Council resources, they must act in accordance with the Council's reasonable requirements and policies.
- A requirement to have regard to any relevant advice and guidance provided by officers or advisors to the Authority when taking decisions.
- A requirement to have regard to an authority's policies around publicity and other corporate operational policies.

The Leicestershire Code currently goes further in respect of the confidentiality and access to information provision at paragraph 5 of the model code and requires a councillor not to disclose information acquired which they believe '**or ought reasonably to be aware**' is of a confidential nature. The Council would wish to see the model code similarly expanded given the potential impact a breach of confidentiality may have on an individual and on the Authority. The Council would also wish to see included a requirement that a councillor should not prevent another person from gaining access to information to which that person is entitled by law.

Finally, in respect of the obligation 'Disrepute', the County Council's Code currently requires a councillor not to conduct themselves in a matter '**which could reasonably be regarded**' as bringing the '**councillors office or**' the Authority into disrepute. It is considered that such wider application of this obligation is appropriate.

Q6. Would you prefer to see the obligations as a long list followed by the guidance, or as it is set out in the current draft, with the guidance after each obligation?

- ~~As a list~~
- ~~Each specific obligation followed by its relevant guidance~~
- No preference - As long as clarity is achieved.

[Note – the County Council produces a separate, much more detailed guide to the Code and its application than what is currently set out in the model Code.]

Q7. To what extent do you think the concept of 'acting with civility' is sufficiently clear?

- To a great extent
- ~~To a moderate extent~~
- ~~To a small extent~~
- ~~Not at all~~
- ~~Don't know/prefer not to say~~

This is sufficiently clear with the benefit of the explanatory paragraphs which follow the two civility commitments.

Q7a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

The concept of acting with civility towards elected members and employees is supported by the County Council. However, guidance on interpretation will be important as it can mean different things to different people.

It would be reasonable to suggest that communications between fellow councillors can be more robust at times. Freedom of expression will allow quite forthright disagreement with other points of view in the political arena, but should not extend to gratuitous personal comments. The County Council's guide to the Code currently excludes complaints regarded as politically motivated or 'tit for tat' and this qualification should also be accounted for.

The sentiment set out in the code regarding the right to expect courtesy from the public is agreed. However, there does not seem to be a reciprocal specific obligation for councillors to treat all people with respect which would appear to be a significant omission and the County Council would wish to see this included– see response to Q5 above.

Q8. To what extent do you think the concept of 'bringing the council into disrepute' is sufficiently clear?

- ~~To a great extent~~
- To a moderate extent
- ~~To a small extent~~
- ~~Not at all~~
- ~~Don't know/prefer not to say~~

Q8a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

Use of the term 'disrepute' is clear and is used in the County Council current Code. However, the commentary provides a narrow interpretation of what this might mean i.e. dishonest or deceitful behaviour. This does not capture all behaviour which might bring an authority into disrepute and it may be better if it were made clear that these are examples only.

The County Council's Code currently goes beyond what is proposed in the model code, including behaviour 'which could reasonably be regarded' as bringing an authority into disrepute' as well as that of a councillor's office - See response to Q5 above.

Q9. To what extent do you support the definition of bullying and harassment used in the code in a local government context?

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

Q9a. If there are other definitions you would like to recommend, please provide them here.

The definition of bullying and harassment is clear and used in the Council's current Code. However, the inclusion of reference to the Equality Act within this is insufficient and specific reference to equality matters would be more appropriate. See response to Q5 above.

Q10. Is there sufficient reference to the use of social media?

- Yes
- No
- Don't know/prefer not to say

Q10a. Should social media be covered in a separate code or integrated into the overall code of conduct?

- ~~Separate code~~
- Integrated into the code
- ~~Don't know/prefer not to say~~

This is an area that has the potential to generate a number of complaints and it may be better if there were a separate section covering social media issues but integrated into the code.

Q10b. If you would like to make any comments or suggestions in relation to how the use of social media is covered in the code please do so here:

It is important that the guidance emphasises that the code applies when using social media. However, the principles and obligations as set out in the code would appear to apply to all types of communication mediums. It is not clear if poor ethical conduct associated specifically to social media would warrant particular, and more focused, obligations. Perhaps examples could be included if this is proving to be the case.

Q11. To what extent do you support the code going beyond the current requirement to declare interests of the councillor and their partner?

- To a great extent
- ~~To a moderate extent~~
- ~~To a small extent~~
- ~~Not at all~~
- ~~Don't know/prefer not to say~~

Q11a. If you would like to elaborate on your answer please do so here:

The County Council has already included these provisions within its existing codes.

Q12. Should the requirement to declare interests be in the main body of the code or in the appendix where the draft model code currently references it?

- In the main body of the code
- In the appendix
- Other (please specify below)
- Don't know/prefer not to say

Q12a. If you would like to make any comments or suggestions in relation to how the requirement to declare interests is covered in the code please do so here:

Table 2 – The County Council like many authorities requires members to register and declare more outside interests as are set out in Table 2 of the Appendix and it is agreed that this is appropriate as they are designed to ensure transparency about other bodies with which the councillor is engaged.

Appendix B, point 4 - Whilst it is agreed that members should declare and register interests set out in Table 2, point 4 of Appendix B is regarded as unreasonable as this would detrimentally affect a members ability to take part in discussions and fulfil their electoral mandate and represent their constituents in all circumstances where, for example, they are a member of two different authorities. Whilst it is recognised that there may be circumstances where a member cannot take part in a debate at either or both authorities, this should be determined on a case by case basis and subject to a public interest test. There should be a presumption that the Code is applied in a way that does not obstruct a member's service on more than one local authority (dual hatted members) and that participation in discussion and decision making at one local authority will not by itself prevent a member from taking part in the discussion and decision making at another local authority.

The County Council's Code currently only prevents a member from taking part in a debate or voting, where the interest is such that a member of the public with knowledge of the relevant facts would reasonably be regarded as so significant it is likely to prejudice their judgement of the public interest. The Council does not support Point 4 of Appendix B without this qualification.

Appendix B, point 5 - Any direct financial/well-being affects appear to be a duplication and would be picked up in points 6 and 7 and this point is not therefore required and should be deleted.

Points 6 and 7 are already settled knowledge within a number of local authority's current codes including that of the County Council. However, the wording of point 7 would need to be amended to make clear this flows from the interests set out in point 6, i.e. point 6 sets out what would be regarded as an interest, and point 7 sets out, if you have any such interest, when that interest will affect your ability to take part at a meeting.

The Code would need to include an explanation of what is meant by 'family', 'friend' and 'close associate.' It will also require a definition of a 'sensitive interest'.

Q13. To what extent do you support the inclusion of these additional categories for registration?

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

Q13a. If you would like to propose additional or alternative categories for registration, please provide them here:

None.

Q14. To what extent do you support the proposed requirement that councillors do not accept significant gifts as set out in Obligation 11?

- To a great extent
- To a moderate extent
- To a small extent
- Not at all
- Don't know/prefer not to say

Q14a. If you would like to elaborate on your answer please do so here:

The interpretation of whether a gift is 'significant' may be problematic.

Q15. The draft code proposes £25 as the threshold for registering gifts and hospitality. Is this an appropriate threshold?

- ~~Yes~~
- ~~Yes, but the amount should be reviewed annually with the code review~~
- ~~No, it should be lower (please specify amount)~~
- No, it should be higher (please specify amount) - £50
- ~~Don't know/prefer not to say~~

Q16. The LGA will be producing accompanying guidance to the code. Which of the following types of guidance would you find most useful?

Please rank 1-5, with 1 being the most useful.

- _____ Regularly updated examples of case law
- _____ Explanatory guidance on the code
- _____ Case studies and examples of good practice
- _____ Supplementary guidance that focuses on specific areas, e.g., social media
- _____ Improvement support materials, such as training and e-learning packages .

All of the above guidance would be useful

Q16a. If you would like to suggest any other accompanying guidance please do so here:

Q17. If you would like to make any further comments about the code please so here:

General – The County Council welcomes a revised model Code and ideally this will be adopted by all local authorities. As a County Council with many members who are dual hatted, the application of a single set of rules would be beneficial and ensure consistency across all tiers.

Co-opted members - The model Code does not make any reference to co-opted members which would suggest the code is no longer intended to apply to such persons. The County Council’s Code currently applies to both and it would wish to see this continue. Given that co-opted members can take part in meetings and vote on matters it would be appropriate for the Code to be extended accordingly.

Duty to comply with investigations/sanctions – The County Council has expressed support for the inclusion of a requirement under the Code that members be required to comply with any formal investigation process and recommended sanctions (CSPL best practice recommendation 2).

The section on ‘Breaches of the Code of Conduct’ at page 6 does not appear necessary or add anything to the obligations set out in the Code and should be deleted.

Example LGA guidance and recommendations – It is unclear what the purpose of this section is. It is down to a local authority to put in place its own procedures to deal with breaches which will be far more involved than what is set out in this section. It is considered appropriate that the two be kept separate.

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