

<b>Report title:</b> Consultation by LGA on Model Code of Conduct for Councils	
<b>Report to:</b> Audit, Governance and Standards Committee	
<b>Report author:</b> Paul Turner, Director, Legal and Assurance	
<b>Date:</b> 6 July 2020	<b>For:</b> Decision
<b>Enquiries to</b> Paul Turner, <a href="mailto:paul.turner@essex.gov.uk">paul.turner@essex.gov.uk</a>	
<b>County Divisions affected:</b> All Essex	

**1. Purpose of report**

- 1.1 The LGA are consulting on a proposed model code of conduct. This report asks the Committee to review the draft in order to help shape ECC's response to that consultation.

**2. Recommendations**

- 2.1 That the Committee review the consultation draft code of Conduct and make any comments they wish to in order to shape the response.

**3. Background and Issues**

- 3.1 In early 2019 the national Committee on Standards in Public Life published a report on standards in local government. They made a number of recommendations to local authorities, to the LGA and to central government. ECC has implemented the recommendations, insofar as it was thought appropriate. Central government has not yet responded to the recommendations so we do not yet know how it will react.
- 3.2 The key recommendation to the LGA was that it should produce a model code for local authorities to consider adopting. At present all local authorities have their own code. In Essex a 'model' code was produced in 2012 but many authorities – including ECC -- amended the 'model' code to reflect their own circumstances. Over time the code has been reviewed by Essex local authorities and now most authorities are using a Essex code which differs significantly from the Essex Code.
- 3.3 This has a particular impact on members of ECC given that 60-70% of our members are also district councillors and have to remember up to four sets of rules at meetings.
- 3.4 ECC's starting point should therefore be that it would welcome the introduction of a model national code, in the hope that all Essex authorities will adopt it. The adoption of a national code would of course meaning that ECC has to accept a code designed for all local authorities rather than specifically for ECC.

- 3.5 There is limited advantage to ECC in adopting the national code unless a significant number of Essex local authorities also adopt it. If the LGA introduces a model code there is likely to be an increased expectation that authorities will use the national code, but there is no guarantee that this will happen. Early conversations with other Essex local authorities indicate that a significant number of authorities are likely to adopt the LGA code but this is of course dependent on the final content of the code and the views of those authorities at the time.
- 3.6 In March 2020 the LGA published a consultation draft of the code. ECC was originally asked to respond to the code by the end of May 2020 but the LGA then decided to republish the draft Code, with a revised closing date of 17 August 2020. This time the LGA have published a specific questionnaire. The LGA documents can be accessed here:  
<https://www.local.gov.uk/local-government-association-model-member-code-conduct>
- 3.7 The code is significantly longer than the current ECC code because as well as including the 'rules' there is a commentary. It appears from the consultation questionnaire, which asks *'Is it sufficiently clear which parts of the Model Code are legal requirements, which are obligations, and which are guidance?'* that the commentary is intended to be guidance, though the suggested answer to that question is 'no', although it would be simple to amend the draft to make it clear
- 3.8 The code also has two appendices, one of which reproduces the 'Nolan' principles (which are only a guide to interpretation) and another which sets out the rules relating to registration and declaration of interests.
- 3.9 Both the ECC code and the draft LGA code have their roots in the former mandatory national code of conduct created by the Local Government Act 2000. This means that broadly the codes are similar but, as would be expected, there are a number of differences. The following table highlights the differences between the current ECC code and compares it to the draft LGA Code, with a commentary.

Current ECC Code	Draft LGA Code	Commentary
Requirement to treat others with respect	Requirement to treat other members and the public with civility but treating employees, partners and volunteers with civility and respect to their role. Expanded wording makes it clear that members should not make unreasonable attack.	It is difficult to see why a two-tier approach is appropriate. The current ECC wording derives from the old national code and has not caused difficulties in practice.
Requirement to uphold the law	Not included in draft LGA code.	The requirement to uphold the law is a useful reminder if a member were to seek to persuade officers to do something unlawful.
Requirement to promote good relationships between people with different protected characteristics	Not included in draft LGA Code.	This is a useful specific clause and it would be helpful to include it.

Current ECC Code	Draft LGA Code	Commentary
and not behave in a way likely to breach Equality Act		
Not bringing the office of councillor into disrepute	<p>Not bringing role or the Council into disrepute.</p> <p>Commentary makes it clear that dishonest/deceitful behaviour can bring council into disrepute.</p>	It is not a breach of the current ECC code to bring the Council into disrepute, although it is a breach to bring the <i>office</i> of councillor into disrepute. It could be argued that criticising the authority brings it into disrepute.
Disclosure of information	Under LGA model code it would be necessary to demonstrate that a member believed information to be confidential.	It is not helpful to have to prove that a member believed something to be confidential, since a member can argue that they believed something was not confidential when it was clearly marked as such. The ECC wording is more detailed and based on the previous national code. It may be better to say that it is a breach to disclose believed that the Council if the Councillor knew or ought to have known'.
Not conferring an advantage or disadvantage on someone (including yourself)	Similar wording. Commentary says: Your position as a Member of the council provides you with certain opportunities, responsibilities and privileges. However, you should not take advantage of these opportunities to further private interests.	Some members may feel that this prevents them using skills and experience in other walks of life. That is unlikely to be what these words are intended to. mean, but it is suggested that these are
When using ECC resources comply with our requirements and not use them improperly	There is a requirement not to misuse council resources. Limited commentary as to what this means and no requirement to comply with ECC requirements.	Draft does not provide for enforcement of any internal rules about resources. It would be helpful if this could be expanded.
Requirement to have regard to statutory publicity code	Not included.	This provision is not often relied upon, but it is a useful for this to have personal consequences for a councillor if they seek to abuse the statutory code and it would be preferable if the LGA code could include it.
Disclosure of interests in correspondence/discussions	Not included.	This provision is (I believe) unique to ECC and it requires members when dealing with officers to disclose any interest. Views are sought on whether ECC should seek to maintain this provision.
Requirement to register gifts and hospitality of over £25	Included.	One of the consultation questions is whether the £25 limit should change.

Current ECC Code	Draft LGA Code	Commentary
	Additional requirement not to accept significant gifts or hospitality from people who may apply to council for any permission licence or other significant advantage	It is not clear whether the requirement to refuse hospitality is helpful – term ‘significant advantage’ is unclear – does it include current potential contractors and partner organisations?
<p>Code interests are:</p> <p>(i) Any contract for goods, services or works which has not been fully discharged between you, your spouse or partner or a body in which the relevant person has a beneficial interest and a <b>body controlled by the Authority</b>;</p> <p>(ii) Any contract with the Authority which has expired within the last 2 years and which was, when it was in force, a <b>disclosable pecuniary interest</b>.</p> <p>(iii) Any tender, bid or quotation submitted within the last 2 years to the Authority which would, if accepted, have amounted to a <b>disclosable pecuniary interest</b>. Tenders, bids or quotations are not required to be registered until 28 days after the last date for the submission of tenders, bids or quotations.</p> <p>(iv) Any body of which you are a member or in which you hold a position of general control or management and to which you have been appointed or nominated by the Authority;</p> <p>(v) Any other body of which you are a member or in which you hold a position of general control or management</p> <p>a. which exercises functions of a public nature;</p> <p>b. which is directed to charitable purposes; or</p> <p>c. one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union);</p>	<p>Other interests are only</p> <p>(i) Any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council;</p> <p>(ii) Any body—</p> <p>(a) exercising functions of a public nature;</p> <p>(b) directed to charitable purposes; or</p> <p>(c) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)</p> <p>of which you are a member or in a position of general control or management.</p>	Under the draft, tenders and expired contracts and contracts with subsidiaries are not required to be registered. This can be a significant administrative burden, but members would still have to register current contracts.
Someone with a code interest may take part unless someone believes it would prejudice consideration of public interest.	Someone with an ‘other’ interest can only exercise same rights as member of public – i.e. they can only speak where the public can take part and they cannot vote.	This is a stricter test than ECC the ECC code – the interest could be trivial and could deprive a member of a vote. Unclear whether it is lawful to deprive a member of a vote if they are allowed to be in the room.
Monitoring Officer can give dispensations for interests	Unclear whether dispensations allowed for other interests.	Power to grant dispensations for ‘other interests’ must be included in the draft.

<b>Current ECC Code</b>	<b>Draft LGA Code</b>	<b>Commentary</b>
Requirement not to take a decision as an individual if you couldn't vote on that item at a meeting.	Not including.	This is presumably an accidental omission from the draft.

- 3.8 The closing date for receipt of comments by the LGA is 17 August 2020, although this may well be postponed as a result of the current emergency.

#### **4. Financial Implications**

- 4.1 This report has no financial implications.

#### **5. Legal Implications**

- 5.1 The Council is required by the Localism Act 2011 to adopt a code of conduct which is consistent with the 'Nolan' principles. It has a wide discretion as to what the code says, but there is a clear benefit to it being consistent with codes adopted by other authorities where there is an overlap of membership between ECC and the other authority.

#### **6. List of Annexes**

Annexe 1 – ECC code

Annexe 2 – Draft LGA Code (including appendices)

Annexe 3 - LGA consultation questionnaire (to be completed online: )

[https://research.local.gov.uk/jfe/form/SV\\_blupYNXmiJ0xECV](https://research.local.gov.uk/jfe/form/SV_blupYNXmiJ0xECV)