

Joint Audit and Governance Committee



Report of Head of Legal and Democratic and Monitoring Officer

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DATE: 29 March 2022

Oxfordshire Model Code of Conduct

Recommendation(s). It is recommended that the committee

Approve the Oxfordshire Code of Conduct appended to this report and commend it to the councils for adoption.

Purpose of Report

1. To provide the committee with a draft model Code of Conduct to consider and, if approved, recommend to the councils for adoption.

Strategic Objectives

2. Openness and Accountability (South), Working in an open and inclusive way (Vale)

Background

3. Section 27 of the Localism Act 2011 (the Act) places a duty on relevant authorities to promote and maintain high standards of conduct. In order to discharge its duty a council must adopt a Code dealing with the conduct that is expected of members of the authority when they are acting in that capacity. Section 28 of the Act provides that a relevant authority must secure that a Code adopted by it, when viewed as a whole, consistent with the Nolan Principles. There is also a requirement to ensure that appropriate measures are taken to record and declare interests. Other than these requirements, it is a matter for each council to adopt a Code that is relevant to its particular circumstances. There is power to amend or replace a Code as circumstances dictate, but the Code must be adopted by full Council.
 4. South Oxfordshire and Vale of White Horse District Councils (the councils) have adopted a Code of Conduct for members which forms part of the shared
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Constitution. The adopted Code is one which had previously been agreed on an Oxfordshire wide basis in 2016.

5. The Committee on Standards in Public Life (CSPL) undertook a review of the ethical framework for members with its report being published in January 2019. The CSPL review concluded that robust standards arrangements are needed to safeguard local democracy, maintain high standards of conduct, and to protect ethical practice in local government. The terms of reference for the review were, to examine the structures, processes and practices in local government in England for:
 - maintaining Codes of Conduct for local councillors
 - investigating breaches fairly and with due process
 - enforcing Codes and imposing sanctions for misconduct
 - declaring interests and managing conflicts of interest
 - whistleblowing
6. The CSPL also assessed whether the existing structures, processes and practices are conducive to high standards of conduct in local government and were to make any recommendations for how they can be improved. The full report can be accessed [here](#)
7. The aim of the Localism Act was to place matters such as the Code of Conduct within the hands of individual councils, but in doing so there are now considerable variations in approach and content. The CSPL heard evidence that the variation between Codes, even where the Codes do not differ in quality, is problematic as it creates confusion among councillors who may be serving at multiple tiers of local government. It also found that the current situation creates confusion among members of the public over what is required of different councillors. This is the also the experience of the Monitoring Officer since working in England. (Wales has a mandatory model Code)
8. Consequently, the CSPL concluded that there should be a national model Code of Conduct, but that this should not be mandatory, and could be adapted by individual authorities. It was recommended that the model Code should be drafted by the Local Government Association, given their significant leadership role in the sector, in consultation with representative bodies of councillors and officers of all tiers of local government. Part of the CSPL recommendations was the introduction of sanctions for breaches of the Code, alongside an appeals process within the ambit of the Local Government Ombudsman but this aspect was outside the scope of the LGA consultation as it requires legislative changes by Government.

A Model Code

9. The Local Government Association (“the LGA”) released a draft Model Member Code of Conduct for consultation on 8 June 2020. Its aim was stated to be that it would be:

“...concise, written in plain English and be understandable to members, officers and the public. The draft Model Member Code has been designed to aid members

in all tiers of local government model the behaviours and high standards that anyone would expect from a person holding public office. Equally, it articulates behaviour which falls below the standards that would be expected of council members.”

10. There was extensive consultation and response on the draft Model which resulted in some changes to the draft and the finalised Model Code was released on 23 December 2020. It incorporated the Committee on Standards in Public Life recommendations on Local Government Ethical Standards and representations from its membership.
11. The Oxfordshire Secretary’s and Monitoring Officers Group (OSMOG) have collaborated on a joint Code previously and have been discussing amending the current joint Code, a move which has been supported by Oxfordshire Association of Local Councils. It was decided that the LGA Model Code would be suitably adapted to provide a new model Code for Oxfordshire which could be adopted across all tiers of government so that members would work to the same Code no matter which organisation they are a member of. All Monitoring Officers are therefore recommending the Code appended to this report to their councils for adoption.

When Does the Code Apply?

12. The Code will apply to members when they are acting in their official capacity, misuse their position or their actions could give the impression to a reasonable member of the public with knowledge of all of the facts that one is acting as a councillor. The latter aspect is one of the most difficult for members of the public to understand as there is a perception that councillors are always ‘on duty’, that is that members are bound by the Code at all times. This has gained prevalence in recent times due to the impact of social media.
13. The legal position under the Localism Act, is that the Code can only apply when the member is acting in the capacity of an elected councillor. Many Codes reflect the definition set out in the old model Code and extend the applicability of the Code to cover situations where a member is acting or appearing or purporting to act as a member or representative of the Council. This is intended to cover the ‘don’t you know who I am’ situation, which is thankfully rare, but there is a clear gap in the law with many Codes being ‘stretched’ to include application to members where the law may not permit, particularly as a consequence of social media activity. There are of course shades of grey as to when a member is acting in that capacity and the CPSL recognised this which is why it recommended that there should be a rebuttable presumption that the person is acting in the capacity of a member unless they demonstrate that they were not. However, this would require a change in the law.
14. The Code will apply to all forms of communication and interaction. This is intended to cover the increase in use of social media by members and that there is sometimes confusion as to whether members are acting in their official capacity when operating outside of formal Council processes, for example on social media.

Content of the Code

15. The CSPL recognised that:

“A Code of Conduct is not a values or vision statement for an organisation. It therefore needs to state clearly what is required of councillors rather than an aspiration or aim. Often this will mean phrasing requirements in terms of what councillors ‘must not’ do. The requirements should also be enforceable: Codes should not include provisions such as ‘councillors must be aware of...”

16. The current Code adopted by the councils does not fully comply with the requirements of the CSPL in that it does not clearly tell councillors what they should or should not do. Furthermore, it does not cover a number of aspects that one would expect to see in a Code such as a definition of bullying and harassment and bringing the office of councillor or the Council into disrepute. The section on declaration of interests also falls short in that it focusses solely on disclosable interests which can lead to councillors overlooking conflicts of interest which may not have a monetary element attached.
17. The CSPL issued 15 best practice recommendations, one of which was that the Code should provide definitions of bullying and harassment. These are now contained in the proposed Code. Members will recall that the Arrangements for considering complaints under the Code which was recently adopted by the councils incorporated all of the other recommendations which apply to them.
18. The proposed Code introduces the requirement to treat other councillors, officers and members of the public with respect. This does not prevent councillors from having a viewpoint and there will still be the ability to express challenge or disagree with opinions, but the line is rightly drawn at personal attack. There is the introduction of a definition of bullying and harassment as mentioned above. A prohibition on bullying and harassment is found in most Codes, but the Model Code introduces the definitions required by the CSPL.
19. In terms of the main changes, declarations of interests have been clarified. Disclosable Pecuniary Interests are set by Regulation so cannot be altered and remain the same as before. However, the Code re-states the position in relation to other interests which are now referred to as other ‘registrable’ interests which are set out in Table 2 of the Code. There is a fundamental change to the approach to interests other than DPI’s in that the concepts of financial interests which are not DPI’s and of well-being have been introduced. There are further requirements around gifts and hospitality to make the position around perception of undue influence clearer.
20. The best way to summarise the change to declaration of interests is that they reflect what used to be known as personal and prejudicial interests prior to the introduction of DPI’s. If the proposed Code is adopted, the Monitoring Officer will be providing training.

Climate and ecological impact implications

21. There are no climate and / or ecological implications arising from the recommendations in this report.

Financial Implications

22. There are no financial implications arising from the recommendations in this report.

Legal Implications

23. All legal matters are set out in the body of the report.

Risks

24. There are no direct risks arising from the recommendations in this report. If the Oxfordshire Code is not adopted by the councils, they will be out of step with the other councils in the county and the current Code of Conduct, is in the view of the Monitoring Officer, not fit for purpose.

Other Implications

25. There are no other implications.

Conclusion

26. The proposed Code follows the format of the LGA Model Code and the Monitoring Officer recommends that the committee consider commending it to each full Council for adoption.

Background Papers

None