

---

Ethics Committee

9 December 2021

**Name of Cabinet Member:**

N/A - Ethics Committee

**Director Approving Submission of the report:**

Director of Law and Governance

**Ward(s) affected:**

None

**Title:** Review of Operation of the Code of Conduct for Elected and Co-opted Members

---

**Is this a key decision?**

No

---

**Executive Summary:**

Since being issued by the Local Government Association (LGA) in December 2020, the Model Code of Conduct (Model Code) has been amended by the LGA twice on 27 January 2021 and 17 May 2021. Changes made in January 2021 have been incorporated into Coventry City Council's revised version of the Model Code (Revised Code) but changes from May 2021 remain outstanding. The amendments published in May 2021 were published without tracked changes. A further version of the amendments made in May 2021 with tracked changes was published by the LGA in September 2021. Most of the amendments are technical in nature and can be amended by the Monitoring Officer using her delegated authority and in respect of minor amendments the Monitoring Officer can make these changes following consultation with the Cabinet Member for Policing and Equalities .

Further, in July 2021 the LGA published Guidance for the Model Code of Conduct (Guidance).

**Recommendation:**

Ethics Committee is recommended to:

- (1) In relation to the amendments originally published in May 2021, made by the LGA to the Model Code, note the amendments and consider any points upon which it may wish to comment;
- (2) In relation to the Guidance:
  - a) Note the content of the Guidance and make any further recommendations;
  - b) Request that this item remains on the Work Programme of the Ethics Committee for continued review.

**List of Appendices included:**

- A. Amended Local Government Association Model Councillor Code of Conduct, published May 2021 as a second amendment (further edition published in September 2021 with tracked changes)
- B. Coventry City Council's Revised Model Code of Conduct (approved version in current operation from the start of the Municipal Year in May 2021) showing the amendments made by the LGA in May 2021 as tracked changes

**Other useful background papers can be found at the following web addresses:**

Guidance on the Local Government Association Model Councillor Code of Conduct:  
<https://www.local.gov.uk/publications/guidance-local-government-association-model-councillor-code-conduct>

**Other useful documents:** None

**Has it been or will it be considered by Scrutiny?**

No

**Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?**

No

**Will this report go to Council?**

No

## **Report title: Review of Operation of the Code of Conduct for Elected and Co-opted Members**

### **1. Context**

- 1.1. At its meeting on 21 January 2021, the Committee considered the Model Code produced by the Local Government Association in December 2020. The Committee authorised officers to produce a Revised Code for onwards consideration by the Constitutional Advisory Panel, Cabinet Member for Policing and Equalities and Council. The Revised Code was brought back to the Committee on 4 March 2021.
- 1.2. The Committee made a number of comments in relation to the Revised Code and the Director of Law and Governance indicated that these comments would be addressed as part of the training for all Members in May, 2021. It was noted that typographical amendments would also be made to the Revised Code.
- 1.3. The Committee's involvement and engagement in the launch of the new Revised Code was sought and this was supported and welcomed.
- 1.4. It was resolved that the Revised Code, together with the Ethics Committee's involvement and engagement in the launch of the new Code, be noted.
- 1.5. The Revised Code was considered by the Cabinet Member for Policing and Equalities and Council on 8 and 16 March, 2021 respectively and was adopted by the Council at the start of the Municipal Year in May 2021.
- 1.6. Since being issued in December 2020, the Model Code of Conduct has been amended twice by the LGA on 27 January 2021 and 17 May 2021. Changes made in January 2021 have been incorporated into the Revised Code but changes from May 2021 remain outstanding. The original version of the amendments published in May 2021 were published without tracked changes. A further version of the amendments made in May 2021 with tracked changes was published by the LGA in September 2021. These amendments are minor or technical in nature.
- 1.7. Further, in July 2021 the LGA published Guidance for the Model Code.

### **2. Options considered and recommended proposal**

- 2.1. Second set of amendments originally published in May 2021, made by the LGA to the Model Code of Conduct

- 2.1.1. A copy of the second set of amendments originally published by LGA in May 2021, showing the amendments as tracked changes is attached at Appendix A.
- 2.1.2. A copy of the Council's Revised Code (approved version in current operation) showing the amendments made by the LGA as tracked changes, is attached at Appendix B.
- 2.1.3. Although there are quite a lot of changes between the first amended version published in January 2021 and the second amended version published in May 2021 none of them appear to be substantive. The effect of the changes are to make the Code clearer for Members.
- 2.1.4. The most significant change to the amended version published by the LGA is at page 11, "Table 1: Disclosable Pecuniary Interests". The amendment to the LGA version notes that in the first row Subject of "Employment, office, trade, profession or vocation" unpaid directorships were included in the Description by way of error. Unpaid directorships have now been removed from the latest amended version. In the drafting of the Coventry City Council Revised Code this had already been picked up and this is why it is not marked as a change in the Revised Code at page 11.
- 2.2. Guidance on the Local Government Association Model Councillor Code of Conduct, published July 2021
  - 2.2.1. The Guidance is supporting guidance which is aimed to help understanding and consistency of approach towards the Model Code. The Model Code and Guidance, have been designed to encourage good conduct, and safeguard the public's trust and confidence in the role of councillors in local government.
  - 2.2.2. The LGA will undertake an annual review of the Model Code and Guidance to ensure it continues to be fit for purpose, incorporating advances in technology, social media, case law and changes in legislation.
  - 2.2.3. In summary the Guidance covers the following areas:

- **Application of the Model Councillors' Code of Conduct**

The Guidance confirms that the Model Code applies when Councillors are carrying out official duties, for example when considering or discussing local authority business, either as a councillor or representing the local authority on an outside body and the Model Code does not, therefore, apply solely when Councillors are in local authority meetings or on local authority premises.

The code applies to all forms of communication and interaction (paragraph 4.3 of the Revised Code).

The Guidance provides helpful examples of when Councillor activity will fall within the Model Code / Revised Code or not. It explains that for something to fall within the Model Code there must be a clear link to a local authority

function or the individual's role as a Councillor.

If there is any ambiguity, as it is not always immediately apparent in which capacity a Councillor is acting, the Guidance recommends that it may be helpful if the Councillor can make clear to people in which capacity they are engaging with them.

The Guidance details that the use or attempt by an individual to use their position as a Councillor to seek to gain an advantage for themselves or someone close to them or to disadvantage someone is an attempt to misuse their position and therefore falls within the scope of the Code of Conduct. Examples given include writing to someone on local authority headed paper or using a local authority email address which may lead someone to assume the individual was writing in their capacity as a Councillor.

The Guidance also addresses Social Media and confirms that a Councillor simply describing themselves as "a Councillor" in a social media posting or at the top of their page or in their username or profile, for example, does not of itself mean that every posting they make is covered by the Model Code / Revised Code. There must be a link within the individual posting or thread to their role as a Councillor or to local authority business. However, even if the Councillor does not describe themselves as a Councillor they may fall within the scope of the Model Code / Revised Code if they are discussing local authority business. Each matter would need to be looked at on a case-by-case basis.

- **General Obligations**

1. **Respect** – means treating other Councillors, officers and members of the public and others with respect, in all forms of communication as failure to show respect can harm public confidence. Examples of respectful behavior are being polite and courteous. The Guidance acknowledges that disrespectful behaviour is subjective and difficult to define but goes on to say that any behaviour that a reasonable person would think would influence the willingness of fellow councillors, officers or members of the public to speak up or interact with a Councillor because they expect the encounter will be unpleasant or highly uncomfortable fits the definition of disrespectful behaviour. Examples of disrespectful behavior are being rude, swearing and ignoring people trying to speak. The guidance reiterates the rules around Article 10 and freedom of speech and that there is an enhanced level of protection in politics including local government politics. The Guidance also outlines that the respect provisions are not intended to "gag" Councillors and prevent them making criticisms of officers but reminds them to do so respectfully, using the appropriate channels in their local authority and not bring their Council into disrepute.
2. **Bullying** – is unacceptable and should not be tolerated. Bullying can impact not only the individual but the wider organisation and affect morale and operational effectiveness. Bullying may be characterised as

offensive, intimidating, malicious, insulting, or humiliating behaviour, an abuse or misuse of power that can make a person feel vulnerable, upset, undermined, humiliated, denigrated or threatened. Bullying can take the form of physical, verbal, and non-verbal conduct but does not need to be related to protected characteristics. Bullying behaviour may be in person or by any other means of communication. Councillors should always be mindful of the overall potential impact of the behaviour on others as it can affect mental health.

Like disrespectful behaviour, bullying can also be difficult to define. When allegations of bullying are considered it's likely that both perspectives will be considered. Conduct is unlikely to be considered as bullying when it is an isolated incident of a minor nature, where it is targeted at issues, rather than at an individual's conduct or behaviour, or when the behaviour by both the complainant and councillor contributed equally to the breakdown in relations. However, the cumulative impact of repeated 'minor' incidents should not be underestimated.

3. **Harassment** – the Protection from Harassment Act 1997 states that harassment includes behaviour which alarms a person or causes a person 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 victim in a manner that could be expected to cause distress or fear in any reasonable person. The Guidance advises that harassment of any kind whether direct or indirect is in no-one's interest and should not be tolerated. Like bullying, harassment can take the form of physical, verbal, and non-verbal conduct but does not need to be related to protected characteristics. Harassment may be in person, or any other means of communication. The factors likely to be considered when assessing allegations of harassment are whether the councillor knows or ought to know that their actions constitute harassment, whether a reasonable person would consider the actions to be harassment and the impact of the behaviour/conduct on victim. Examples of harassment include but are not limited to: unwelcome emails, inappropriate comments, physical contact threats or sexual harassment.
  
4. **Discrimination** – Councils have a duty under the Equality Act 2010 to promote equality and to eliminate unlawful discrimination and harassment. Under the Act the Council may be liable for any discriminatory acts which a Councillor commits. Councillors must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders the Council's fulfilment of its positive duties under the Act. Unlawful discrimination is where someone is treated unfairly because of a protected characteristic as follows:
  - a. age
  - b. disability

- c. gender reassignment
- d. marriage and civil partnership
- e. pregnancy and maternity
- f. race
- g. religion or belief
- h. sex and sexual orientation

Examples of discriminatory behaviour include but are not limited to: exclusion or treating someone less favourably based on any of the Protected Characteristics and comments, slurs, jokes, statements, questions, or gestures that are derogatory or offensive to an individual's or group's characteristics. The Guidance also mentions that Councillors should be aware of "unconscious bias" and ensure they make decisions based on evidence rather than assumptions.

5. **Impartiality of officers** – Officers must be politically neutral (unless they are political assistants) and should not be coerced or persuaded to act in a way that would undermine their neutrality. At the heart of the Councillor-Officer relationship is mutual respect and they should therefore be conducted in a positive and constructive way. Officers may sometimes give Councillors advice that they do not want to hear or does not suit their political views. They must be allowed to do this without fear of recriminations to allow for good decision-making looking at all relevant options.
6. **Confidentiality and access to information** – Council business is by law generally open and the Council should always operate as transparently as possible, there will be times – for example, when discussing a named individual or commercially sensitive information – when it is appropriate for local authority business to be kept confidential or treated as exempt information. In those circumstances, Councillors must not disclose confidential information, or information which you believe to be of a confidential nature, unless consent is obtained, there is a lawful requirement or it is in the "public interest". A Councillor is entitled to access information held by the local authority for the performance of their duties as a councillor. If a councillor wishes to use local authority information for any purpose other than in connection with their duties as a councillor, and that information is not in a publicly available document, however, then that councillor should submit a freedom of information request so that it can be given to them to use freely.
7. **Disrepute** – Councillors are trusted to make decisions on behalf of their community and their actions and behaviour are subject to greater scrutiny than that of ordinary members of the public. The Article 10 right to freedom of expression is not unrestricted. Actions of Councillors may

have an adverse impact on their role, other councillors and/or the Council and may lower the public's confidence. The Guidance advises that disrepute can be defined as a lack of good reputation or respectability. In the context of the Code of Conduct, a Councillor's behaviour in office will bring their role into disrepute if the conduct could reasonably be regarded as either: reducing the public's confidence in them being able to fulfil their role; or adversely affecting the reputation of the Council's Councillors, in being able to fulfil their role. The misconduct will need to be sufficient to damage the reputation of the Councillor's role or local authority, as opposed simply to damaging the reputation of the individual concerned.

- 8. Misuse of position** – Councillors should not take advantage of their responsibilities and opportunities to further their own or others' private interests or to disadvantage anyone unfairly. Even failed attempts to misuse position are a breach of the Model Code. Councillors who own land, or whose relatives or close associates own land, need to be particularly cautious where planning matters are concerned.
- 9. Misuse of resources and facilities** – Councillors may be provided with resources and facilities by the Council to assist them in carrying out their duties. These resources, eg stationery, printing, etc are given to help Councillors carry their roles more effectively and are not to be used for business (purely political or otherwise) or personal gain. They should be used in accordance with the purpose for which they have been provided and the Council's own policies regarding their use.
- 10. Gifts and Hospitality** – in order for a Councillor to protect their position and the reputation of the local authority, they should exercise caution in accepting any gifts or hospitality which are (or which they reasonably believe to be) offered to them because they are a councillor. The presumption should always be not to accept significant gifts or hospitality. However, there may be times when such a refusal may be difficult if it is seen as rudeness in which case a Councillor could accept it but must ensure it is publicly registered where over the value of £50. Declined gifts or hospitality reaching the threshold should also be declared. This will help the Council to identify if there are any patterns and to be aware of who might be seeking to influence the authority.
- 11. Declarations of interest** – Councillors must register two different categories of interests:
  - a. Disclosable Pecuniary Interests – these are categories of interests which apply to the Councillor and their partner. The categories are set out in regulations made under s27 of the Localism Act 2011 and knowing non-compliance is a criminal offence.
  - b. Other registerable interests – these are categories of interest which apply only to the Councillor and which the LGA believes should be registered as an aid to transparency.



A helpful flow-chart is provided in the Guidance at Appendix 1: “Interests Flowchart”. More about this is in the Report entitled: “Review of Guidance on Members’ Interests”.

## **2.5 Recommendation:**

Ethics Committee is requested to :

(1) In relation to the amendments originally published in May 2021, made by the LGA to the Model Code note the amendments and consider any points upon which it may wish to comment;

(2) In relation to the Guidance:

a) Note the content of the Guidance and make any further recommendations

b) Request that this item remains on the Work Programme of the Ethics Committee for continued review.

## **3. Results of consultation undertaken**

3.1 There has been no consultation as there is no proposal to implement at this stage which would require a consultation.

## **4. Timetable for implementing this decision**

4.1 Any actions arising from this report will be implemented as soon as possible.

## **5. Comments from Director of Finance and Director of Law and Governance**

5.1 Financial implications

There are no specific financial implications arising from the recommendations within this report.

5.2 Legal implications

There are no specific legal implications arising from this report. The issues referred to in this report will assist the Council in complying with its obligations under section 27 of the Localism Act 2011.

## **6 Other implications**

None

**6.1 How will this contribute to the Council Plan ([www.coventry.gov.uk/councilplan/](http://www.coventry.gov.uk/councilplan/))?**

Not applicable.

**6.2 How is risk being managed?**

There is no direct risk to the organisation as a result of the contents of this report.

**6.3 What is the impact on the organisation?**

No direct impact at this stage.

**6.4 Equalities / EIA**

The guidance now issued by the LGA is helpful in reinforcing that Councillors must be careful not to act in a way which may amount to any of the prohibited forms of discrimination, or to do anything which hinders the Council's fulfilment of its positive duties under the Equalities Act.

**6.5 Implications for (or impact on) the environment**

None

**6.6 Implications for partner organisations?**

None at this stage.

**Report author(s): Sarah Harriott**

**Name and job title:** Sarah Harriott, Corporate Governance Lawyer, Regulatory Team,

Legal Services **Directorate: Law and Governance**

**Tel and email contact:** 024 7697 6928, [sarah.harriott@coventry.gov.uk](mailto:sarah.harriott@coventry.gov.uk)

Enquiries should be directed to the above person

<b>Contributor/approver name</b>	<b>Title</b>	<b>Service Area</b>	<b>Date doc sent out</b>	<b>Date response received or approved</b>
<b>Contributors:</b>				
Suzanne Bennett	Governance Services Officer	Law and Governance	25.11.2021	26.11.2021
<b>Names of approvers for submission:</b> (officers and members)				

Finance: Graham Clark	Lead Accountant	Finance	25.11.2021	25.11.2021
Legal: Julie Newman	City Solicitor and Monitoring Officer	Law and Governance	22.11.2021	24.11.2021
Councillor Walsh	Chair of Ethics Committee		25.11.2021	29.11.2021

This report is published on the council's website: [www.coventry.gov.uk/councilmeetings](http://www.coventry.gov.uk/councilmeetings)