

WAVERLEY BOROUGH COUNCIL

STANDARDS COMMITTEE

1 FEBRUARY 2021

Title:

New LGA Model Code of Conduct

Portfolio Holder: Councillor John Ward, Leader of the Council

Head of Service: Robin Taylor, Policy and Governance, and Monitoring Officer

Key decision: No

Purpose and summary

This report presents the new Model Code of Conduct, published in December 2020 by the Local Government Association (LGA). The LGA consulted widely on the new code before publishing the final version. The Committee is asked to give consideration to recommending to Full Council that the new model code be adopted.

Authorities remain responsible for their own local code and so there is no 'requirement' to adopt the code, either in part or in full. Authorities may choose to amend the model code prior to adopting it and/or can choose to amend it at any point in the future.

The Committee can, if it wishes, propose to Council amendments to the model code although none have been recommended by officers.

2. Recommendation

It is recommended that the Standards Committee:

- (i) recommend to Full Council that the new LGA model code be adopted without any local amendments; and
- (ii) ask the Monitoring Officer to arrange councillor briefings on the new model code (once adopted).

3. Reason for the recommendation

Adopting the LGA Model Code of Conduct will ensure that the Code follows best practice for the sector.

4. Background

- 4.1 All councils are required to have a local Member Code of Conduct. Waverley Borough Council's current code is attached as Annexe 1. Councillors, upon taking up office, sign an oath which binds them to comply with their code of conduct.
- 4.2 Town and Parish Councils in the Waverley area are each responsible for agreeing their own local code but by and large these mirror Waverley's own code.

- 4.3 In December 2020 the Local Government Association (LGA) published their new Model Member Code of Conduct (attached as Annexe 2). The LGA has developed this new model code in consultation with the sector and offers it as a template for councils to adopt in whole and/or with local amendments. The LGA have committed to undertaking an annual review of the Code to ensure it continues to be fit-for-purpose, particularly with respect to advances in technology, social media and any relevant changes in legislation.
- 4.4 For information, an explanatory note published by LLG (Lawyers in Local Government) is attached as Annexe 3.
- 4.5 The LGA documentation is largely self-explanatory. However, there are a few things worth noting about the new code:
- (i) The model code seeks to build upon the Committee for Standards in Public Life's seven 'Nolan Principles' of public life (selflessness; integrity; objectivity; accountability; openness; honesty and leadership). It builds on these principles with a set of 'general principles' developed specifically for the role of the councillor. Helpfully, these are phrased in the first person, reminding anyone reading the document that the code of conduct belongs to councillors. It is they who must own, champion and embody it. Monitoring Officers and others have a professional responsibility to support councillors in upholding high standards of conduct but ultimately only councillors can make or break their own code.
 - (ii) Earlier consultation drafts of the model code used the phrase 'civility' (where most authorities' codes, including Waverley's, had long used the terminology of 'respect'). Some consultees supported this shift in terminology. Others did not. There were pros and cons to this proposed change in focus. Ultimately, the LGA decided to use the more familiar word 'respect' rather than 'civility' in their final model code. Helpfully, the new model code provides a definition of respect in case it is not immediately obvious or perhaps as a useful reminder to reflect upon. It clarifies that councillors can 'express, challenge, criticise and disagree with views, ideas, opinions and policies in a robust but civil manner' but that councillors should not 'subject individuals, groups of people or organisations to personal attack'. The new model code also clarifies that councillors have a right to expect respectful behaviour from the public, other councillors and employees. (code para 1)
 - (iii) The model code contains specific references to councillors not bullying or harassing others. The original LGA model code did not contain these references although many authorities, including Waverley, had already amended their codes in recent years to clarify this duty. Helpfully, the model code explicitly refers to definitions of bullying and harassment (from ACAS and the Protection of Harassment Act 1997 respectively) (code para 2).
 - (iv) The preamble to the code makes it clear that the code applies to 'all forms of communication and interaction' including online meetings, on

the telephone and via social media ('application of the code of conduct'). This is helpful given so many alleged breaches of the code relate to electronic communications of one form or another (and this was the case prior to the increased levels of remote working brought about by Covid).

- (v) The model code contains new duties to undertake code of conduct training and to cooperate with any code of conduct investigation undertaken (code para 8).
- (vi) The new model code uses the terminology of 'disclosable pecuniary interests' (see code Appendix B table 1), 'other registerable interests' (see code Appendix B table 2) and 'non-registerable' interests (see code Appendix B paras 7-10). This terminology will be partly familiar and partly unfamiliar to those used to the current Waverley code. If adopted, it will be important that officers and councillors familiarise themselves with this new way of thinking about and describing interests. If adopted, councillors will be expected to use this terminology when registering and disclosing interests. Officers regard the new ways of describing interests within the model code as helpful.

'Disclosable pecuniary interests'

The model code reiterates the legal duty to register and disclose 'disclosable pecuniary interests' and lists what these are (see table 1 within the model code).

'Other registerable interests'

It also confirms that councillors 'must' register a specific set of 'other registerable interests' (see table 2 within the model code).

'Non-registerable interests'

The model code also covers the need to disclose interests, when a matter arises at a meeting, that do not fall into either of the above categories but which directly relate to a councillor's 'financial interest or wellbeing'. The code is clear that councillors 'must' disclose this type of interest when it arises (para 7). The code sets out when this type of interest will be deemed to have arisen (para 8) and the two tests councillors should apply when considering whether or not they should participate and vote (para 9).

- 4.6 The new code also sets out new provisions for dealing with 'sensitive' interests which means those which 'could lead to the councillor, or a person connected with the councillor, being subject to violence or intimidation'. In short, the code allows for these types of interest to be registered with the Monitoring Officer but not put on public record.

5. Relationship to the Corporate Strategy and Service Plan

- 5.1 This report supports the Council's Corporate Strategy priority of 'Open, democratic and participative governance'.

6. Implications of decision

6.1 Resource (Finance, procurement, staffing, IT)

There are no direct resource implications arising from this report.

6.2 Risk management

N/A

6.3 Legal

The principal statutory provisions relating to standards of conduct for Councillors are contained in the Localism Act 2011. Section 27(1) of the 2011 Act provides that the Council must promote and maintain high standards of conduct by Councillors and Co-opted Members of the authority.

Sections 27 and 28 of the Localism Act require the Council to adopt a Code of Conduct consistent with the Nolan Principles of good governance and to appoint at least one Independent Person whose views must be sought and taken into account before the Council makes any decision about an alleged breach of the Code that has been investigated.

There is no obligation by the Council to adopt a particular model Code of Conduct. The statutory duty is to adopt a code of conduct which complies with the statutory requirements referred to above.

6.4 Equality, diversity and inclusion

There is a general obligation in the Code of Conduct in which Members undertake to "not do anything which may cause the Council to breach any of the equality enactments (as defined in Section 33 of the Equality Act 2010)".

6.5 Climate emergency declaration

There are no direct climate emergency implications arising from this report.

7. Consultation and engagement

- 7.1 N/A

8. Other options considered

- 8.1 The Council may choose not to adopt the new Model Code, or to make amendments to it, to meet local circumstances.

9. Governance journey

9.1 The recommendation of the Standards Committee will be reported to Full Council.

Annexes:

Annexe 1 – Waverley Members' Code of Conduct

Annexe 2 – New LGA Model Code of Conduct (December 2020)

Annexe 3 – New LGA Model Code of Conduct - LLG Explanatory note

Background Papers

There are no background papers, as defined by Section 100D(5) of the Local Government Act 1972).

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