

LGA Consultation on Draft Model Member Code of Conduct

Proposed Consultation Response from Babergh and Mid Suffolk District Council

About You

Your name: Emily Yule – Monitoring Officer

Are you...

A councillor

An officer

Answering on behalf of a whole council (Please provide council name below)

Babergh District Council and Mid Suffolk District Council

Other (please specify below)

Please indicate your council type

Community/Neighbourhood/Parish/Town

District/Borough

County

Metropolitan/Unitary/London Borough

Other (please specify below)

Application of the Code

Under the Localism Act 2012, the Code of Conduct applies to councillors only when they are acting in their capacity as a member. The LGA believes that because councillors are elected by the public and widely recognised by the public, it makes sense for them to continue to model these behaviours when they are making public comment, are identifying as a councillor and when it would be reasonable for the public to identify them as acting or speaking as a councillor. The Committee on Standards in Public Life supported this approach in their report into Local Government Ethical Standards. Whilst the LGA is waiting for Government's response to these recommendations the option has been added in square brackets as it would need changes in legislation

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

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

Under the current arrangements it can be very difficult for the Monitoring Officer to establish 'capacity' when considering code of conduct complaints – i.e. was the Councillor acting in an official capacity or in a private capacity. This is particularly relevant to complaints involving social media activity. In many cases it is difficult to prove official capacity and therefore the complaint cannot be upheld. This can be very unsatisfactory to the complainant and the public who often consider that any public activity by Councillors should be covered by the Code of Conduct.

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

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

Specific obligations

The Code lists 12 specific obligations – these set out a minimum standard councillors are asked to adhere to. Each obligation or group of obligations is put into a wider context to explain why that particular obligation is important.

Q4. To what extent to 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
1. Treating other councillors and members of the public with civility.	✓				
2. Treating council employees, employees and representatives of partner organisations and those volunteering for the councils with civility and respecting the role that they play.	✓				
3. Not bullying or harassing any person.	✓				
4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.	✓				
5. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.	✓				
6. Not preventing anyone getting information that they are entitled to by law.	✓				

Appendix C

7. Not bringing my role or council into disrepute.		✓			
8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.	✓				
9. Not misusing council resources.	✓				
10. Registering and declaring my interests.	✓				
11. Not accepting significant gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.	✓				
12. Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.		✓			

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

All of the obligations make sense, however putting them in context (with examples and relevant case law) is essential in respect of being able to adequately assess whether the code has been breached. Members of the public need greater clarity about what these obligations mean in practice so that they have a better understanding of when it is appropriate to make a complaint.

The description of 'disrepute' is not clear enough and provides too wide an umbrella under which complaints have can be made. This is a very subjective definitive and is open to varying interpretations.

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

Q7. To what extent to 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

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 definition doesn't adequately capture the protections provided to Councillors in respect of the 'cut and thrust' of robust political debate, which have been tested in case law.

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:

This could be better described as conduct which undermines public trust and confidence in you or the local authority.

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.

No other definition proposed

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

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:

There is an increasing need for clearer guidance for Councillors about appropriate conduct on social media both to ensure a high standard of conduct by Councillors, to enable Councillors to challenge the inappropriate behaviour of others on social media

and to provide protection to Councillors from social media 'trolling'. This needs to be integrated in the code, but the level of detail required would more appropriately be provided in a supplement to the code – not a separate social media code.

Registration and declarations of interests

The law at present requires, as a minimum, registration and declaration of 'Disclosable Pecuniary Interests' - that is matters which directly relate to the councillor and their partner if applicable.

The LGA is proposing that all councillors are required to declare interests where matters also relate to or affect other family members or associates. The LGA has broadened the requirement to declare interests beyond this current statutory minimum in line with a recommendation from the Committee on Standards in Public Life. These specific provisions are set out in **Appendix B** of the Code.

Q11. To what extent to 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 code needs to provide greater clarity about the definitions of 'family member' and 'close associate'.

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:

It is also suggested that more outside interests should be registered than is the current statutory minimum. These are set out in **Table 2 of the Appendix** and are designed to demonstrate to the community transparency about other bodies with which the councillor is engaged.

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
Any organisation, association, society or party 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		✓			
Any organisation, association, society or party that exercises functions of a public nature of which you are a member or in a position of general control or management	✓				
Any organisation, association, society or party directed to charitable purposes	✓				
Any organisation, association, society or party of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)	✓				

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

Membership of any 'closed membership' organisations such as Freemasons.

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:

It would provide greater clarity for all parties if the default position was to reject all offers of gifts and hospitality unless in a civic role or only when the Councillor is acting as the appointed representative of the Council.

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's review

No, it should be lower (please specify amount) All gifts and hospitality should be registered regardless of the value

No, it should be higher (please specify amount) _____

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 4

Explanatory guidance on the code 1

Case studies and examples of good practice 5

Supplementary guidance that focuses on specific areas, e.g., social media 2

Improvement support materials, such as training and e-learning packages 3

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 do so here:

The proposed model code does not adequately deal with the issues of predetermination and bias which are often more relevant than the disclosure of interests. There needs to be clearer guidance around what constitutes predetermination particularly in reference to those Councillors who hold office for multiple authorities and may be considering a matter in more than one capacity.

One of the key challenges for Monitoring Officers when applying and upholding the code is the lack of sanctions available and the perceived 'lack of teeth' that the code has. Members of the public are often left feeling that the complaints process has been ineffective in dealing with the improper conduct. It is disappointing that the model code has not taken into account the Committee on Standards in Public Life's recommendations on suspensions. This could have been an effective sanction in demonstrating that the complaints process has weight, provided that the safeguards were in place to ensure its appropriate use.

The proposed code does not provide enough protection for Councillors from persistent and vexatious complaints. Monitoring Officers receive large volumes of complaints and often the process is misused by complainants – often attempting to use the conduct route when other complaints processes have failed and making complaints that are about process or service standards rather than conduct. Local authorities currently have to use local policies and procedures to deal with persistent and vexatious complainants but would have greater authority to reject frivolous complaints if there was provision in the model code.