

REPORT TO AUDIT AND STANDARDS COMMITTEE



DATE	16 th January 2023
PORTFOLIO	None
REPORT AUTHOR	Lukman Patel (Chief Operating Officer and Monitoring Officer)
TEL NO	7140
EMAIL	lpatel@burnley.gov.uk

CODE OF CONDUCT REVIEW

PURPOSE

1. To consider the Borough Council's Code of Conduct (Existing Code) for Members and associated Complaints Procedure following the publication of the Local Government Ethical Standards report produced by The Committee on Standards in Public Life ("the CSPL") and the Local Government Association's (LGA) Model Code of Conduct (LGA's Model Code).

RECOMMENDATION

2. That the Audit and Standards Committee recommend to Full Council to make the proposed changes to the Council's Existing Code and associated Complaints Procedure as set out in Appendix B in response to the Best Practice recommendations contained in the Local Government Ethical Standards report produced by the CSPL as abstracted in the LGA's Model Code.
3. That the Audit and Standards Committee either:
 - 3.1 establish a sub-committee to consider and produce a report as to whether it should adopt the Model Code and report back to this Committee in the first instance with their findings; or
 - 3.2 resolve not to recommend to Full Council to approve the Model Code at this juncture; or
 - 3.3 defer the decision to adopt the Model Code for 12 months due to the perceived ambiguities in the LGA's Model Code at this moment in time and review the situation when the position is clearer or the LGA produces an updated Code.

REASONS FOR RECOMMENDATION

4. The Committee has the responsibility to promote and maintain high standards of conduct of elected Members.

It is important to review the Existing Code periodically to ensure that it is benchmarked and reflects best practice. Addressing any shortfalls in the existing arrangements by adopting the best practice recommendations from the CSPL is considered beneficial. It

	<p>also increases transparency and improves trust and confidence in the local democratic process.</p> <p>The Committee may wish to establish a sub-committee whose remit shall be to consider whether it should recommend to Full Council to adopt the LGA's Model Code if it considers this necessary to maintain high standards of conduct of elected Members.</p> <p>The Committee may decide to defer the establishment of a sub-committee to consider the adoption of the Model Code for 12 months due to the perceived ambiguities in the LGA's Model Code at this moment in time and review when the position becomes clearer or the LGA produces an updated Code.</p> <p>The Committee may opt not to recommend to Full Council to approve the Model Code at this juncture as the Existing Code is fit for purpose and the LGA's Model Code does not materially improve or add more rigour to existing arrangements.</p>
--	--

SUMMARY OF KEY POINTS	
5.	<p>Background</p> <p>Section 27 of the Localism Act 2011 requires local authorities to promote and maintain high standards of conduct by members and co-opted members of the authority.</p> <p>The Council adopted its Existing Code in 2012 and it has been subject to a few minor amendments over the years. The Existing Code and associated complaints procedure are available at:</p> <p><i>Existing Code:</i> CONTENTS (modern.gov.co.uk)</p> <p><i>Complaints Procedure:</i> Part 5.1 Code of Conduct and Complaints Procedure Appendix REVIEW DRAFT (modern.gov.co.uk)</p> <p>The Borough Council's Monitoring Officer also oversees the complaints of Parish and Town Councillors. Parish and Town Councils have Codes of Conduct and complaints procedures that are broadly similar to the Borough Council's Existing Code.</p>
6.	<p>The Committee on Standards in Public Life Report</p> <p>The CSPL advises the Prime Minister on ethical standards across the whole of public life in England and monitors and reports on issues relating to the standards of conduct of all public office holders.</p> <p>The CSPL undertook a review of local government ethical standards.</p> <p>Following the completion of its review the CSPL published a report on 30 January 2019. A copy of the CSPL report is available at:</p> <p>https://www.gov.uk/government/publications/local-government-ethical-standards-report</p> <p>In its report dated 30 January 2019 the CSPL made 24 recommendations to the government to improve ethical standards in local government. Recommendation 1 is abstracted as follows:</p>

“The Local Government Association should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government.”

On 18 March 2022 the Government published its response to the CSPL recommendations.

A copy of the Government response is available at:

<https://www.gov.uk/government/publications/local-government-ethical-standards-government-response-to-the-committee-on-standards-in-public-life-report/government-response-to-the-committee-on-standards-in-public-life-review-of-local-government-ethical-standards#recommendation-1>

The Government responded as follows to CSPL’s Recommendation 1:

“The Localism Act 2011 states that relevant authorities must promote and maintain high standards of conduct by members and co-opted members. It requires these authorities to adopt a code of conduct for their councillors. Authorities can determine the content of their own code of conduct. However, codes must conform to the 7 ‘Nolan’ principles of standards in public life: selflessness, integrity, objectivity, accountability, openness, honesty, and leadership. Relevant authorities for the purposes of these requirements include local authorities in England, namely county councils, district councils, London borough councils and parish and town councils.

It is for individual councils to set their own local code, in line with the Act. The government has previously published a light-touch illustrative code of conduct.

The Local Government Association has worked with sector representative bodies to update its own suggested code of conduct, with the intention that this new suggested code could establish a consistent benchmark that local authorities can amend or add to as they see fit to reflect local circumstances and priorities. The Local Government Association published the updated code of conduct in January 2021. However, it remains a local decision on whether this model code is adopted.”

7. LGA’s Model Code

Following the publication of the CSPL report, the LGA began drafting a Model Code for consideration for Local Authorities that was published in May 2020. A copy of the Model Code is available at:

[Local Government Association Model Councillor Code of Conduct 2020](#)

The LGA’s Model Code has received a lukewarm response from local authority Monitoring Officers. The inability to introduce firmer sanctions from the Government for a breach of the Code of Conduct has probably heightened the apathy. Requests were sent to neighbouring local authorities and Lancashire County Council canvassing whether they have or propose to adopt the LGA’s Model Code. Responses (where received) have been abstracted at Appendix A.

It has also been observed that the LGA’s Model Code departs from narrower wording in s31 of the Localism Act 2011 (which relates to Disclosable pecuniary interests) and introduces a distinction between things that "directly relate" to an interest and things that "affect" an interest. It has been suggested that this is probably because it assumes the change to the law recommended by the CSPL report to repeal s 31 of the Localism Act

	<p>2011 but until such time as s31 is repealed departing from (narrowing) the wording currently in the Localism Act is not recommended given the criminal sanctions for failure to disclose a DPI.</p> <p>The LGA's Model Code was also drafted before the Government's response to the CSPL report that could explain why some of the provisions contained in the LGA's Model Code. As Members will note the Government did not adopt all of the recommendations contained in the CSPL report.</p> <p>Should Members consider the necessity to consider adopting the LGA's Model Code, it is suggested that a sub-committee is established to consider the LGA's Model Code to ensure that proper consideration is provided to the document before it is recommended to Full Council for approval.</p>
8.	<p>Best Practice Recommendations</p> <p>The Local Government Ethical Standards report produced by the CSPL also contained 15 Best Practice Recommendations. The Monitoring Officer has reviewed these by reference to the Council's existing processes and procedures and provided a narrative at Appendix B. Where the current processes and procedures are not in line with these recommendations, proposals have been put forward by the Monitoring Officer for consideration by the Committee. It is recommended that the Committee consider these proposals for adoption before they are presented to Full Council.</p>

FINANCIAL IMPLICATIONS AND BUDGET PROVISION	
9.	None arising directly from this report.

POLICY IMPLICATIONS	
10.	Not applicable.

DETAILS OF CONSULTATION	
11.	<p>The following persons and organisations have been consulted on the draft report. Their responses (if provided) are abstracted at Appendix A.</p> <p>Parish and Town Councils in the Borough of Burnley Blackburn with Darwen Borough Council Hyndburn Borough Council Lancashire County Council Pendle Borough Council Ribble Valley Borough Council Rossendale Borough Council The Borough Council's Two Independent Persons</p>

Appendix A – Responses to Consultation received.

Name of organisation/individual	Response received
Briercliffe Parish Council	No response received.
Cliviger Parish Council	No comments
Dunnockshaw & Clowbridge Parish Council	No response received.
Habergham Eaves Parish Council	No comments
Hapton Parish Council	No response received.
Ightenhill Parish Council	No response received.
Padiham Town Council	No comments
Worsthorne with Hurstwood Parish Council	No response received.
Blackburn with Darwen Borough Council	<p>BwD reviewed the LGA code in January 2021 Local Government Ethical Standards Report.pdf (blackburn.gov.uk) and opted to retain our local code but updated it to reflect the Committee on Standards in Public Life best practice recommendations. The Standards Committee were advised with options to adopt the LGA Code in its entirety, adopt the LGA code with amendments or retain the local Code and update it and the complaints procedure to reflect the CSPL recommendations. The Committee recommended to Council to approve the third option. The Committee preferred the local adopted code in terms of its format and wording.</p> <p>Also, please see link to the article: Monitoring officers give lukewarm response to LGA Model Code of Conduct, unlikely to recommend implementation: LLG (localgovernmentlawyer.co.uk)</p>

Hyndburn Borough Council	<p>I am currently looking at it for Hyndburn.</p> <p>I understand only around 4 Lancashire LA's have adopted the new code to date.</p> <p>Personally I don't like the LGA code as I think it is unduly complicated, but ultimately it will be members decision.</p>
Lancashire County Council	<p>Lancashire County Council looked at this earlier this year through a member working group, and decided that we would retain our old code and not use any of the LGA Code. The only thing we changed was to increase the threshold for the declaration of Gifts and Hospitality from £25 to £50.</p> <p>There were two main reasons why we didn't amend our Code:</p> <ol style="list-style-type: none"> 1. One of the key benefits our members initially saw in the LGA code was that it might help deliver some consistency across councils, which might have been particularly helpful in a two tier area like ours where some councillors will be operating to two slightly different codes. However, when we started to ask around back then, we got a very clear message that many councils were either adopting it in part or adopting it with revisions. Either way, it meant that the "consistency" ambition was never going to be realised 2. The LGA code is a perfectly good code and we had no issues with it, but we didn't feel that it said anything that our current code didn't already say. Some things it perhaps said better or more clearly, other things worse, but overall, we didn't feel it made much difference. Given that generally we don't have many issues or complaints under the code anyway, it was not felt that we had a problem that needed fixing, and as the new code did not present immediate and obvious advantages, it felt a bit like it would mean doing some work without getting much out of it.
Pendle Borough Council	No response received.

<p>Ribble Valley Borough Council</p>	<p>Ribble Valley adopted in April 2021 and we trained all councillors in autumn 2021 using Paul Hoey and then I trained (or invited for training) all Parish Councils so that they could decide if they wanted adopt it or not. Quite a few have a adopted the same code which is helpful.</p> <p>We previously had an extremely limited code and had had some high profile standards issues. I wanted all members to buy into the new code, and the training, which largely they did. The timing was helpful from that perspective. I also drafted new arrangements which are quite prescriptive on how complaints are dealt with, including the investigation and hearings. This was also to head off any future issues around the process. It seems to have had the desired effect. I have found being able to refer members to examples in the LGA guidance which accompanies the code useful too.</p> <p>I did tweak the code slightly to deal with the fact that we are a committee system.</p>
<p>Rossendale Borough Council</p>	<p>We have adopted it with slight tweaks as I didn't feel that the model code went far enough to satisfy the best practice recommendations. I also wanted to keep additional items so that it fit Rossendale and the standards we were wanting to stay with. Members appreciated that this might be subject to change as further consideration to Standards continues.</p> <p>Members have found the code easier to work with and the LGA guidance document that accompanies it is very useful and easy for our members to understand. Please see link for our report etc which may or may not be of use to you. It is item D2.</p> <p>https://www.rossendale.gov.uk/meetings/meeting/1251/council</p>

The Borough Council's Two Independent Persons	Support recommendations.
---	--------------------------

Appendix B – Proposals to comply with The Local Government Ethical Standards report Best Practice recommendations.

Best Practice Recommendation	Current Position	Proposals
<p>Best practice 1: Local authorities should include prohibitions on bullying and harassment in codes of conduct. These should include a definition of bullying and harassment, supplemented with a list of examples of the sort of behaviour covered by such a definition.</p>	<p>This is currently not expressly included in the Council’s Existing Code, but other parts of the Existing Code can be used to regulate such adverse behaviour.</p> <p>Bullying is prohibited but not defined.</p> <p>Harassment is neither defined nor expressly prohibited.</p>	<p>Add the words “harass or victimise” after the word “bully” in Part 1, 3(1)(2)(b) of the Existing Code. Although, victimisation is not specifically referenced, it is considered appropriate to prohibit such conduct as it is often an adverse behaviour linked to bullying and/or harassment that should be condemned and subject to sanctions.</p> <p>It is also proposed that the following definitions and examples of bullying, harassment and victimisation are added into the Council’s Existing Code for clarity.</p> <p>“Definitions and Examples:</p> <p><i>Bullying is a particular form of harassment and may be characterised as persistent, offensive, intimidating, malicious or insulting behaviour, possibly through an abuse or misuse of position or power where the intention or outcome is to undermine, humiliate, denigrate or injure the recipient. Examples of bullying include: shouting at others in public or in private; personal insults; ignoring or excluding individuals; persistent, excessive, unfair or unjustified criticism; setting impossible deadlines or targets/objectives or making inconsistent demands. This list is not exhaustive.</i></p> <p><i>Harassment is, in general terms, unwanted, unreasonable and offensive conduct affecting the dignity of the individual. It includes verbal, non-verbal and physical conduct that may be related to age, gender, race, disability, sexual orientation, religion and belief, nationality or any personal characteristic of the individual, and may be persistent or an isolated incident. Examples of harassment include: unwanted physical contact, offensive jokes or banter, offensive emails, pictures or graffiti, unwelcome sexual advances, exclusion and victimisation. This list is not exhaustive.</i></p> <p><i>Victimisation is treating someone less favourably than others because the individual has, in good faith, complained (whether formally or otherwise) that someone has been bullying or harassing them or someone else, or supported someone to make a complaint or given evidence in relation to a complaint. Examples include: Isolating someone because the individual has made a complaint or treating them differently. This list is not exhaustive.”</i></p>

		Parish and Town Council's to be asked to consider implementing these changes to their respective Codes if the Borough Council decides to approve the same.
Best practice 2: Councils should include provisions in their code of conduct requiring councillors to comply with any formal standards investigation and prohibiting trivial or malicious allegations by councillors.	<p>Members are not expressly required to comply with any formal standards investigations pursuant to the Existing Code.</p> <p>Following consultation with the Independent Person, if the Monitoring Officer consider an allegation malicious, the complaint can be rejected.</p>	<p>Add in an express requirement in Part 1 of the Existing Code as follows:</p> <p><i>“(8) Members are required to comply with any investigation in relation to complaints against their conduct or relating to other elected members of the authority. Failure to do so is considered a breach of the Code of Conduct.”</i></p> <p>Add the word “trivial” after the word “malicious” at page 2 of the complaints procedure for Members.</p> <p>The Monitoring Officer to write to Clerks of Parish and Town Council's for their Members to consider including this requirement in their respective complaints procedure if this proposal is approved by the Borough Council.</p>
Best practice 3: Principal authorities should review their code of conduct each year and regularly seek, where possible, the views of the public, community organisations and neighbouring authorities.	This is currently not undertaken.	<p>The Monitoring Officer has forwarded a draft copy of this report to the Council's Independent Person, Parish and Town Councils, Lancashire County Council and neighbouring authorities for consideration. Comments received by them are abstracted at Appendix A of this report.</p> <p>An annual review of the Code of Conduct shall be added to the work plan of the Council's Audit and Standards Committee. Before any material review of the Existing Code is proposed, the views of the public, community organisations, Parish and Town Council's and neighbouring authorities should be considered.</p>
Best practice 4: An authority's code should be readily accessible to both councillors and the public, in a prominent position on a council's website and available in council premises.	The Council's Existing Code and associated complaints procedure is available on the Council's website and at a copy is available at the Town Hall.	Not applicable.

Best practice 5: Local authorities should update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.	The Register is currently held in paper format	<p>The Governance Management Information System has the capability for Members of the Borough Council to self-register gifts and hospitality online. This would then immediately be available on the website to view or download on an individual member or whole council basis. Training will be provided to Members of the Borough Council.</p> <p>Parish and Town Councils to be asked to update their gifts and hospitality register at least once per quarter, and publish it in an accessible format, such as CSV.</p>
Best practice 6: Councils should publish a clear and straightforward public interest test against which allegations are filtered.	The test outlined in the current complaints procedure is clear and is considered appropriate.	Not applicable.
Best practice 7: Local authorities should have access to at least two Independent Persons.	The Council currently has two Independent Persons.	Not applicable.
Best practice 8: An Independent Person should be consulted as to whether to undertake a formal investigation on an allegation, and should be given the option to review and comment on allegations which the responsible officer is minded to dismiss as being without merit, vexatious, or trivial.	This process is already incorporated into the Council's complaints procedure for Members.	Not applicable.

<p>Best practice 9: Where a local authority makes a decision on an allegation of misconduct following a formal investigation, a decision notice should be published as soon as possible on its website, including a brief statement of facts, the provisions of the code engaged by the allegations, the view of the Independent Person, the reasoning of the decision-maker, and any sanction applied.</p>	<p>This is established in the Council's existing practices.</p>	<p>Not applicable.</p>
<p>Best practice 10: A local authority should have straightforward and accessible guidance on its website on how to make a complaint under the code of conduct, the process for handling complaints, and estimated timescales for investigations and outcomes.</p>	<p>Details on how to make a complaint and the process for handling complaints are available and accessible on the Council's website. Details of estimated timescales for investigations and outcomes are not included on the website.</p>	<p>The Monitoring Officer to arrange for details of estimated timescales for investigations and outcomes to be included on the Council's website.</p> <p>Parish and Town Councils to be reminded to do the same or re-direct to the Borough Council's website.</p>
<p>Best practice 11: Formal standards complaints about the conduct of a parish councillor towards a clerk should be made</p>	<p>Each Parish and Town Council has its own processes and procedures.</p>	<p>The Monitoring Officer to write out to Parish and Town Clerk's recommending that that their Complaints Procedures are reviewed and updated if necessary.</p>

<p>by the chair or by the parish council, rather than the clerk in all but exceptional circumstances.</p>		
<p>Best practice 12: Monitoring Officers' roles should include providing advice, support and management of investigations and adjudications on alleged breaches to parish councils within the remit of the principal authority. They should be provided with adequate training, corporate support and resources to undertake this work.</p>	<p>The Council's Monitoring Officer regularly attends suitable training courses to undertake his role. The Monitoring Officer is supported by his Deputy and other officers at the Council to support him with investigations.</p>	<p>Not applicable.</p>
<p>Best practice 13: A local authority should have procedures in place to address any conflicts of interest when undertaking a standards investigation. Possible steps should include asking the Monitoring Officer from a different authority to undertake the investigation.</p>	<p>This is currently not included in the Council's Constitution.</p>	<p>Discussions will be had with neighbouring authorities with a view to establishing a reciprocal arrangement.</p>

<p>Best practice 14: Councils should report on separate bodies they have set up or which they own as part of their annual governance statement and give a full picture of their relationship with those bodies. Separate bodies created by local authorities should abide by the Nolan principle of openness and publish their board agendas and minutes and annual reports in an accessible place.</p>	<p>The Council has a joint venture for Weavers Triangle with Barnfield Investment Properties Limited, namely Barnfield and Burnley (Developments) Limited). The Council has a 50 per cent stake in the latter.</p> <p>Details of this joint venture are not currently recorded in the Council's annual governance statement</p> <p>The board agendas and minutes and annual reports are currently not published due to commercial confidentiality. However, before any major development is progressed, a report is presented to the Council's Executive and is generally considered by the Council's Scrutiny Committee. These reports also make their way to Full Council when a budget is required to fund a development.</p>	<p>By adopting this best practice recommendation, it is considered that full and frank discussions with the developer could be lost, and commercial discussions could be prejudiced.</p> <p>All material decisions made by the joint venture that require implementation are presented to the Council's Executive and are generally considered by the Council's Scrutiny Committee. These reports also make their way to Full Council when a budget is required to fund a development.</p> <p>However, an annual progress report to the Council's Scrutiny and Executive Committee is recommended.</p> <p>Details of this joint venture shall be included in the Council's annual governance statement.</p>
---	--	---

<p>Best practice 15: Senior officers should meet regularly with political group leaders or group whips to discuss standards issues.</p>	<p>This is currently not undertaken.</p>	<p>This item to be added to the Group Leaders Agendas periodically for discussion.</p>
---	--	--