

**Wiltshire Council**

**Full Council**

**18 October 2022**

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**Part 12 of the Constitution – Members’ Code of Conduct**

**Summary**

This report presents a recommendation from the council’s Standards Committee that Full Council adopt a new Members Code of Conduct and accompanying Guidance for Wiltshire Council, based on the Local Government Association’s (LGA) Model Code of Conduct 2020.

**Proposals**

**To adopt the version of Part 12 – Members Code of Conduct attached at Appendix 1.**

**Reason for Proposals**

The recommendation of the Standards Committee set out here is in accordance with its responsibilities as set out in Part 3 of the Constitution:

*2.5.6. advising the Council on the adoption or revision of the Members’ code of conduct and the arrangements for dealing with Member complaints of misconduct which the Council is required to make under Section 28 of the Localism Act 2011;*

**Perry Holmes – Director Legal and Governance (and Monitoring Officer)**

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## Part 12 of the Constitution – Members' Code of Conduct

### Purpose

1. The report presents the recommendation of Standards Committee that Full Council adopt a new Members Code of Conduct and accompanying Guidance for Wiltshire Council (attached at **Appendix 1**), based on the Local Government Association's (LGA) Model Code of Conduct 2020. The council's current Code is attached for reference at **Appendix 2**.

### Background

2. Under Section 28 of the Localism Act 2011, all councils are required to have a local Member Code of Conduct. Although there is no national Code, bodies such as the LGA have produced model codes for adoption by councils.
3. In January 2019, the Committee on Standards in Public Life published a report on Local Government Ethical Standards, following a consultation in 2018. This included many recommendations which would require legislative changes. The government has not yet responded to the Committee's report.
4. The report's first recommendation was that the LGA should create an updated model code of conduct, in consultation with representative bodies of councillors and officers of all tiers of local government. In December 2020, the LGA Model Code of Conduct 2020 (link [here](#)) was approved.
5. In February 2021, the Standards Committee asked its Constitution Focus Group to review the new LGA Model Code. Due to the Covid-19 pandemic, the Focus Group's reported its comments to Standards Committee in January 2022. It expressed reservations about whether it was likely to lead to an improvement in councillor conduct, given that there had not been, and were unlikely to be, changes to Government legislation to enforce sanctions. The Group also raised concerns about:
  - the potential impact on those town and parish councils currently using Wiltshire Council's existing Code;
  - the Group raised specific concerns regarding paragraph 8.4, in terms of the implications of a Standards Sub-Committee making an unreasonable recommendation, such as asking the member to resign.
6. Having noted the Focus Group's comments, the Standards Committee established a member working group to review the LGA Model Code further and bring its findings back to the Committee.
7. The Standards Committee's LGA Model Code of Conduct Working Group met on four occasions, comprising three members of Wiltshire Council and two independent

members of its Standards Committee. On 20 April 2022, the Working Group presented its first report to Standards Committee (link [here](#)) recommending the adoption of an amended version of the LGA Model Code. Having received the report, the Standards Committee asked the Working Group to meet again to consider comments from the council’s Group Leaders and any further comments from the Constitution Focus Group.

**Main considerations**

- 8. On 5 October 2022, the Working Group presented its second report (attached at **Appendix 3**) to the Standards Committee, proposing a slightly amended version of the Code. Having consulted Legal Services, they amended paragraph 8.4 as follows:

Version proposed in April 2022

*8.4 I comply with all sanctions and recommendations imposed on me following a finding that I have breached the Code of Conduct.*

Version proposed now

*8.4 I comply with all sanctions imposed on me and any recommendations agreed to be undertaken by me following a finding that I have breached the Code of Conduct and any undertakings that I have agreed to fulfil as part of the informal/alternative resolution of any alleged breach of the Code of Conduct.”*

- 9. Regarding the Constitution Focus Group’s concerns about this paragraph noted above, the Working Group noted that:
  - a) Actual sanctions are limited to those defined through case law;
  - b) Any public decision is challengeable via Judicial Review;
  - c) Legal advice indicates that, under the Code proposed at **Appendix 1**, it is only where a member **agrees to fulfil a recommendation but does not do so** that this could be considered a further breach of the Code.
- 10. The Group accepted that there were a range of views surrounding the issue of compliance and, like Wiltshire’s existing Code, the proposed Code would lack legal enforcement. However, the group felt that the proposed Code provided greater clarity regarding the conduct required. They also considered that the sanctions available to the Standards Committee, such as publication of its findings, do carry some weight in encouraging good conduct by elected members and holding those who breach their Code to account.
- 11. The Group endorsed their original conclusions regarding the benefits of the proposed Code over the council’s existing Code, namely:

<b>LGA Model Code of Conduct Working Group findings</b>	
<b>Benefits of proposed LGA Model Code over current WC Code</b>	<b>Impact</b>
Sets out expected behaviours in greater detail, including the following additional sections:	Provides more clarity for councillors and the public on what is/isn’t considered acceptable conduct

<b>LGA Model Code of Conduct Working Group findings</b>	
<b>Benefits of proposed LGA Model Code over current WC Code</b>	<b>Impact</b>
<ul style="list-style-type: none"> <li>• Respect</li> <li>• Bullying and harassment</li> <li>• Impartiality</li> <li>• Disclosure and use of information</li> <li>• Disrepute</li> <li>• Abiding by the Code of Conduct</li> <li>• Gifts and hospitality</li> </ul>	<p>Provides more clarity for those assessing alleged breaches of the Code</p> <p>By being more prescriptive, demonstrates the council's full commitment to standards in public life</p> <p>Although some of the bulleted sections are mentioned in the current WC Code's guidance, guidance is not enforceable</p>
<p>Uses the phrasing "I will..." rather than "I must..."</p>	<p>Encourages greater personal ownership of the Code, as opposed to a code that is imposed by others</p>
<p>The Guidance states that the Code applies to all forms of communication and interaction, including:</p> <ul style="list-style-type: none"> <li>• at face-to-face meetings</li> <li>• at online or telephone meetings</li> <li>• in written communication</li> <li>• in verbal communication</li> <li>• in non-verbal communication</li> <li>• in electronic and social media communication, posts, statements and comments.</li> </ul>	<p>Provides greater clarity on when the Code may apply, particularly applicable in the context of the number of complaints now received about conduct on social media</p>
<p>Regarding Registers of Interest:</p> <ul style="list-style-type: none"> <li>• defines 'sensitive' interests</li> <li>• states that you must leave the room in some circumstances</li> <li>• includes guidance re interests specifically for Cabinet members</li> </ul>	<p>Provides greater clarity on handling interests</p>
<p>Regarding Gifts and Hospitality, requires that gifts not accepted must also be declared</p>	<p>Provides greater transparency regarding Gifts and Hospitality</p>

12. Following consideration of the Code, Standards Committee resolved to recommend that Full Council adopt it as Part 12 of Wiltshire Council's Constitution – Members' Code of Conduct.

13. It should be noted that the Code recommended by Standards Committee is different from the LGA Model Code 2020 in the following respects:

- a) It is shorter, with much of the explanatory detail contained within the Code's accompanying guidance.
- b) It **retains** two requirements that are included in the council's **current** Code but **not** in the LGA Model Code (for clarity, these are in **red**). These sections relate to not placing oneself under financial or other obligation to other parties, and decision-making.
- c) The proposed code also retains some sections of this council's current Code's Guidance, which were not included in the LGA Code (these are also in **red**).
- d) Paragraph 8.4 is amended as detailed above.

### **Overview and Scrutiny Engagement**

14. None. The report presents a recommendation of the Standards Committee, which has responsibility overseeing the council's Code of Conduct for Members.

### **Safeguarding Implications**

15. There are no safeguarding implications arising from this report.

### **Public Health Implications**

16. There are no public health implications arising from this report

### **Procurement Implications**

17. There are no procurement implications arising from this report

### **Equalities Impact of the Proposal**

18. Under paragraph 2.3, the Code recommended by Standards Committee contains a requirement that councillors "promote equality and do not discriminate unlawfully against any person."

### **Environmental and Climate Change Considerations**

19. There are no environmental and climate change implications arising from this report

### **Workforce Implications**

20. There are no workforce implications arising from this report.

### **Financial Implications**

21. There are no financial implications arising from this report.

## Legal Implications

22. The Code recommended by Standards Committee is in accordance with the requirements of the Localism Act 2011 for the council to:

- a) adopt a Code that is consistent with the seven 'Nolan' principles of standards in public life (selflessness, integrity, objectivity, accountability, openness, honesty and leadership); and
- b) set out the rules that the authority wants to put in place with regard to requiring members to register and disclose pecuniary and non-pecuniary interests.

## Conclusion

Council is asked to consider the recommendation of the Standards Committee that it adopts version of Part 12 of the Constitution – Members Code of Conduct and accompanying Guidance attached at **Appendix 1**.

## **Perry Holmes – Director, Legal & Governance (and Monitoring Officer)**

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Date of report: 9 October 2022

## Appendices

Appendix 1 Part 12 – Members Code of Conduct with accompanying guidance (**new version** recommended by Standards Committee)

Appendix 2 Part 12 – Members Code of Conduct with accompanying guidance (**existing version**)

Appendix 3 Report to Standards Committee from its LGA Model Code of Conduct Working Group (5 October 2022)

## Background documents

First report of the Standards Committee's LGA Model Code of Conduct Working Group – 20 April 2022 (link [here](#)).