

Response of East Sussex County Council to Local Government Association consultation on the Model Code of Conduct for Councillors

Are you...

- A councillor
- An officer
- X Answering on behalf of a whole council (Please provide council name below)

East Sussex County Council

- Other (please specify below)

Please indicate your council type

- Community/Neighbourhood/Parish/Town
- District/Borough
- X 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:

The inclusion in the draft Code of the wording 'you are expected to uphold high standards of conduct and show leadership at all times' could lead to confusion and suggestions that the Code should apply 'at all times'. There needs to be a clear distinction as to when the Code applies – when acting in the capacity as a member of the authority. It should be clear that the Code does not apply when not acting in that capacity thereby creating the distinction between public and private life. rather than in private life

The inclusion of the text in square brackets is confusing. The text is summarised below:

Application of the Code

The Code of Conduct applies to you when you are acting [or claiming or giving the impression that you are acting] in [public or in] your capacity as a member or representative of your council, although you are expected to uphold high standards of conduct and show leadership at all times. The Code applies to all forms of member communication and interaction, including written, verbal, non-verbal, electronic and via social media, [including where you could be deemed to be representing your council or if there are potential implications for the council's reputation.]

Specific obligations of general conduct

This section sets out the minimum requirements of member conduct. Guidance is included to help explain the reasons for the obligations and how they should be followed. These obligations must be observed in all situations where you act [or claim or give the impression that you are acting] as a councillor [or in public], including representing your council on official business and when using social media.

This text refers to recommendations made by the Committee on Standards in Public Life in 2019. The inclusion in the draft Code of recommendations made by the Committee (to which the Government has not yet responded) will create ambiguity and confusion. It is important that there is clarity in relation to the rules that Members are subject to. These references should either be removed or the publication of the updated Code should be deferred until such time as the Government has responded.

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

It is not clear in the Model Code what are legal requirements, which are Principles, (Guidance) and which are the Obligations. The distinction needs to be clear for both

councillors and the public and that any allegation of a breach of the Code needs to specify which Obligation(s) is alleged to have been breached. There is not a clear distinction between the guidance and the obligations. The Guidance appears in effect to be more than just guidance and is a Welcome interpretation of the obligations.

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”)
- **X** 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 do 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	X*				
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.	X*				
3. Not bullying or harassing any person.	X				
4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.	X				
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.	X				
6. Not preventing anyone getting information that they are entitled to by law.	X				
7. Not bringing my role or council into disrepute	X				
8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.	X				
9. Not misusing council resources	X*				
10. Registering and declaring my interests	x				

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	x				
12. Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt	X*				

- - see comments in response to question 5

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

Obligations 1 and 2 – would prefer that this referred to treating others with respect rather than civility. Respect is a broader and more widely understood term.
Obligation 12 – the threshold for registering gifts and hospitality should be increased from £25 to £50 which is the threshold in place in East Sussex since 2012

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 do 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:

It would be far clearer to all if the wording of the current Code was used – You must treat others with respect. Respect is an important and fundamental principle in public life, it should not be removed, and is well understood.

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:

None

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

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:

Use of social media is a normal part of everyday life and just another form by which councillors can communicate. There is no need for a separate document

Registration and declarations of interest

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 do you support the code going beyond the current requirement to declare interests of the councillor and their partner?

- To a great extent
- **X** 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:

Whilst we agree with the principle it is very important that there is clarity about who this will be extended to. Terms such as “family” are too ambiguous. How is family being defined? Does this mean immediate family or extended family? Families where there is no legal relationship?

The same comment applies to associates, this needs to be clarity over what an associate is, and the nexus between the Member and the person concerned for them to be an Associate

The inclusion of the financial interest or well-being of a relative or close associate could lead to confusion. Explanations are required as to what is meant by ‘financial interest’, ‘well-being’ 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?

- **x** 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	x				
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.	x				

Any organisation, association, society or party directed to charitable purposes	X				
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)	X				

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

None

14. To what extent to 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:

This is supported in principle but there needs to be clarity as to what constitutes 'significant'.

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)
- No, it should be higher (please specify amount) £50
- 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.

1. Explanatory guidance on the code
2. Improvement support materials, such as training and e-learning packages
3. Supplementary guidance that focuses on specific areas, e.g., social media
4. Case studies and examples of good practice
5. Regularly updated examples of case law

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 so here:

- a) It would be helpful if the draft Code contained information regarding interests which the Member considers to be sensitive including a definition of 'sensitive'. The following proposed wording could be included in the Model Code:

Sensitive information

(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, the monitoring officer shall not include details of the interest on any copies of the register of members' interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in the register of members' interests.

(3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

- b) The Code of Conduct should include provisions requiring councillors to comply with any formal standards investigation, and prohibiting trivial or malicious allegations by councillors as proposed by the Committee for Standards in Public Life.

(4) The Code should provide that where a member has a personal interest (which is not pecuniary or prejudicial) that where it is already set out in the register of interest that there is no requirement to declare at a meeting unless the Member wants the interest to be expressly recorded in the minutes.