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| REPORT TO:        | STANDARDS SUB COMMITTEE  |
| DATE:             | 9 MARCH 2022   |
| SUBJECT:          | PROPOSED ADOPTION OF LOCAL GOVERNMENT ASSOCIATION<br>MODEL CODE OF CONDUCT |
| KEY DECISION:     | N/A  |
| REPORT AUTHOR:    | MARK STINSON – ASSISTANT DIRECTOR FOR GOVERNANCE AND<br>MONITORING OFFICER |
| WARD(S) AFFECTED: | ALL  |
| EXEMPT REPORT?    | NO   |

### **SUMMARY**

The purpose of this report is to present to the Committee the Local Government Association (LGA) Model Code of Conduct and associated guidance.

The Committee is asked to review the LGA Model Code of Conduct and to consider recommending its adoption to the Council.

### **RECOMMENDATIONS**

That the following be recommended to Council:

1. That the Model Code of Conduct at Appendix A be adopted, without amendment, as this Council's Code of Conduct (including those parts shown in square brackets and being relevant to the Cabinet model operated by this Council).
2. That delegated authority be granted to the Monitoring Officer to make amendments to the Protocol on Member and Employee Relations so far as is necessary to ensure consistency with the Model Code of Conduct.
3. That the Monitoring Officer be authorised to update the Council's Constitution accordingly.

## **REASONS FOR RECOMMENDATIONS**

- To ensure that the Council has a robust, up-to-date Code of Conduct that provides clarity to members and residents as to expected standards of member behaviour.
- To protect the democratic role of members, encourage good conduct, and safeguard the public's trust and confidence in the role of councillors and in local government.
- To help attract and retain councillors
- To help avoid the kind of governance failures seen in some high profile local authorities which were at least in part caused by officer and/or member behaviours

## **OTHER OPTIONS CONSIDERED**

To do nothing – which would result in retention of the existing Code of Conduct.

### **1.0 INTRODUCTION**

- 1.1 In accordance with section 27(2) of the Localism Act 2011, every local authority must adopt a Code of Conduct which deals with 'the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity'.
- 1.2 The Council adopted its current Code of Conduct on 25 July 2012. It then re-affirmed the Code on 10 June 2013 and made some amendments, including (i) the addition of categories of 'Local Non Pecuniary Interests' (LNPIs), (ii) setting out how conflicts of interest should be dealt with, (iii) reinstating the register of gifts and hospitality and (iv) updating the descriptors attached to the Nolan Principles. On 21 January 2019, the Council further amended the Code of Conduct by linking certain Council policies to the Code of Conduct – including the Protocol on Member and Employee Relations, Members Data Protection Protocol, Whistleblowing Policy and Grievance Policy. This made a breach of any of those policies a breach of the Code of Conduct.
- 1.3 On 30 January 2019 the House of Lords Committee on Standards in Public Life issued a report on Local Government Ethical Standards. The report made a number of recommendations, including recommendations in respect of the Code of Conduct. In particular, the Committee noted significant variance between the Codes adopted by different local authorities and recommended the creation of a Model Code of Conduct by the LGA. The Committee also noted that some key matters were missing from some local authority Codes, such as social media use, bullying and harassment and recommended that these issues should be included in any Model Code.
- 1.4 As a result of the report of the Committee on Standards in Public Life the LGA, in December 2020, published a Model Code of Conduct (attached at Appendix A) and associated Guidance (attached at Appendix B). The Model Code was subject to wide consultation with the local authority sector, including consultation with elected members and Monitoring Officers.
- 1.5 The LGA's Model Code of Conduct is designed to protect the democratic role of members, encourage good conduct, and safeguard the public's trust and confidence in the role of the councillor in local government. Whilst it can be adapted to local circumstances, a key benefit is in bringing consistency across the local government sector and this will be

especially helpful where members serve on different tiers of local authority. The Model Code is relatively short and easy to read, and is therefore more accessible to members, officers and the public alike. The LGA will review the Model Code on an annual basis to ensure that it reflects developing legislation and case law and to ensure that it incorporates advances in technology and social media.

- 1.6 Boston Borough Council's current Code of Conduct is very short, and is largely restricted to the seven Nolan principles. It does not include a number of the obligations that are present in the Model Code and it provides no assistance or guidance in the use of modern technology and social media. Such a limited version of the Code of Conduct is not conducive to the aim, which I am sure all members will support, of upholding good standards of ethical behaviour.
- 1.7 It is also important to note that the Council will likely be seen as a leading example by parish councils. A decision by BBC to adopt a more comprehensive Code of Conduct will very likely be followed by parish councils. The Monitoring Officer engaged with the Lincolnshire Association of Local Councils prior to submitting this report to Council.

## 2.0 **MODEL CODE OF CONDUCT**

- 2.1 The Code of Conduct applies when a councillor acts in that capacity and the new Model Code provides much more detail on this point than the current Code – including (i) where a councillor misuses his/her position (a 'do you know who I am' scenario); and (ii) where a councillor gives the impression of acting in their capacity as a councillor even though they may have no authority to act as a councillor. The Guidance provides yet more detail on these points including worked examples (such as use of the title 'councillor' when posting on social media). Both the Model Code and the Guidance reflect current case law to assist in determining when a councillor acts in that capacity as opposed to their personal capacity. Boston's current Code does not contain reference to misuse of position or giving the impression of acting as a councillor.
- 2.2 The Model Code of Conduct contains a number of key obligations which are summarised below:

### (i) Respect

Members must treat other members, officers and members of the public with respect. The Guidance states that respect for others is fundamental in any civilised society. It is summarised in the Code and the Guidance as 'politeness, courtesy and civility in behaviour, speech and the written word'. *However, it is very important to note that both the Model Code and the Guidance recognise the right of a councillor to challenge, to criticise, and to disagree with ideas, opinions and policies in a robust but civil manner. The Guidance also makes it clear that, in a political environment, a councillor's freedom of expression extends to the expression of views that may shock, disturb, or offend others. The requirement for respect is not intended to stand in the way of lively debate.*

Members are also entitled to expect respectful behaviour from the public. If members of the public become abusive, intimidatory or threatening then members are entitled to cease any interaction with that individual and to report the matter to the Council.

Respect does not appear in BBC's current Code.

(ii) Bullying, harassment and discrimination

Members must not bully or harass any person. Members must promote equalities in accordance with the Equality act 2010 and must not discriminate unlawfully against any person. Bullying is defined as 'offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate denigrate or injure the recipient'. Harassment is defined as 'conduct that causes alarm or distress or puts people in fear of violence' and must involve such conduct on at least two occasions. Unlawful discrimination is where 'someone is treated unfairly because of a protected characteristic'. There are a number of such protected characteristics, such as age, disability, etc.

Bullying harassment and discrimination does not appear in BBC's current Code (other than a brief mention of discrimination in the Nolan Principles).

(iii) Impartiality of officers

Councillors must not compromise, or attempt to compromise, the impartiality of anyone who works for or on behalf of the Council. At the heart of the relationship between officers and members is the importance of mutual respect. This obligation does not prevent councillors from disagreeing with officers, nor challenging officers robustly so long as conducted in a civil manner.

This does not appear in BBC's current Code, although the Code does currently link to the Protocol on Member and Employee Relations, which does have the effect of bringing member/officer relations within the remit of BBC's current Code.

(iv) Confidentiality and Access to Information

Councillors must not disclose confidential/exempt information; must not improperly use information (gained solely as a consequence of being a councillor) for their own advancement or the advancement of friends/family/etc; and must not prevent anyone from obtaining information to which they are entitled in law.

This does not appear in BBC's current Code in this form, but some elements of it are contained within the Nolan Principles.

(v) Disrepute

Councillors must not bring their role, or the authority, into disrepute. Disrepute can be defined as a lack of good reputation or respectability. Examples of behaviours that might cause disrepute include dishonesty and deceitfulness and could be displayed in a number of ways – such as circulating highly inappropriate, vexatious or malicious communications, making demonstrably dishonest statements or displaying abusive and threatening behaviour.

This does not appear in BBC's current Code, but some of the behaviours that would lead to disrepute are covered by the Nolan Principles.

(vi) Use of Position

A Councillor must not use, or attempt to use, her/his position to the advantage or disadvantage of her/himself.

In BBC's Code of Conduct this is set out in the Nolan Principles.

(vii) Use of local authority resources and facilities

Councillors must not misuse council resources. This includes a requirement to use council resources in accordance with the Council's requirements and to ensure that Council resources and facilities are not used for political purposes (except where approved by the Council – examples of acceptable use include ward surgeries and political group meetings).

This does not appear in BBC's current Code.

(viii) Complying with the Code of Conduct

The Model Code includes a requirement that members attend Code of Conduct training provided by the Council. Councillors must also co-operate with any Standards investigation, must not seek to intimidate any person involved in an investigation, and must comply with any sanction imposed following any finding of a breach.

This does not appear in BBC's current Code.

(ix) Interests

The Model Code of Conduct includes a requirement to register certain interests and not to participate in decisions relating to those interests. These include the Disclosable Pecuniary Interests that members are already required to disclose and 'Other Registrable Interests' which are similar to (but expand beyond) the 'Local Choice Interests' that are contained in BBC's current Code. A comparison of Other/Local Registrable Interests is set out below:

**BBC's current Code of Conduct:**

Members must register any body of which they are a member or in a position of general control or management either:-

- (1) exercising functions of a public nature; or
- (2) directed to charitable purposes; or
- (3) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

**Model Code of Conduct:**

You must register as an Other Registerable Interest :

- a) any unpaid directorships
- b) any body of which you are a member or are in a position of general control or management and to which you are nominated or appointed by your authority
- c) any body
  - (i) exercising functions of a public nature
  - (ii) directed to charitable purposes or

- (iii) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union)

of which you are a member or in a position of general control or management

The Model Code of Conduct also deals with the disclosure of interests that do not need to be registered as either Disclosable Pecuniary Interests or Other Registrable Interests but should nevertheless be declared in a meeting. These are matters that may either *directly relate* to your financial interests or wellbeing (or those of a relative or close associate) or those which may *affect* such interest or wellbeing. Depending upon (i) whether the matter directly relates or affects your interest or wellbeing, and (ii) the extent of the affect, and (iii) whether members of the public are permitted to speak – members may or may not be able to participate in the debate (but not vote) or may instead be required to leave the room.

Interests are covered by BBC's current Code of Conduct, but are more limited in scope – with a shorter list of Other/Local Choice Interests. Guidance on how non-registrable interests should be handled are more detailed in the Model Code of Conduct than in the current Code.

#### (x) Gifts and Hospitality

Councillors must not accept gifts or hospitality, regardless of the value, if they could give rise to real or substantive personal gain or a reasonable suspicion that they may influence a councillor to show favour to persons in their dealings with the Council. Any other gifts and hospitality valued at £50 or more must be registered with the Monitoring Officer, as must any offer of such gift or hospitality that the Councillor has refused.

The registration of gifts and hospitality valued at £50 or more and the registration of gifts and hospitality that have been refused are already obligations in BBC's current Code of Conduct

### 3.0 COUNCILLOR COMMENTS

3.1 Two LGA member workshops were held in August/September this year on ethical behaviours, along with two training sessions on the Model Code of Conduct in September. Member feedback from the workshops on ethical behaviour included a general level of consensus that good/ethical behaviour is essential in local government. Members identified many strands to good ethical behaviour, all of which are supported by the Model Code of Conduct. A small selection of the key issues raised in the workshops include:

- The importance of being able to challenge bullying and poor behaviour
- Promoting the values of high standards of behaviour
- Maintaining good relationships with officers
- Maintaining confidentiality
- Demonstration of openness and honesty and leading by example
- Protecting the reputation of the Council
- Building community trust and community cohesion
- Treating others as you would wish to be treated yourself

### 4.0 CONCLUSIONS

- 4.1 As Monitoring Officer, my view is that the Model represents a robust Code of Conduct which is more comprehensive than the current BBC Code of Conduct, is written in such a way as to be accessible and understandable to all, and supports all of the key points raised by members in the recent Ethical Behaviours Workshop. Taken together with the LGA Guidance, it is much easier for members, officers and the public to understand what is expected in terms of standards of member conduct.
- 4.2 In my view there is no need to link other policies, such as the Protocol on Member and Employee Relations, as the Model Code is sufficiently robust and detailed. Other policies are reference as appropriate under the Model Code (such as in use of Council resources). I would, however, recommend a review of the Protocol on Member and Employee Relations to ensure that it is consistent with the Model Code.

#### **FINANCIAL IMPLICATIONS**

None

#### **LEGAL IMPLICATIONS**

Adoption of a Code of Conduct is a legal requirement under s27(2) of the Localism Act 2011. The Council has discretion as to the content of any such Code of Conduct.

Similarly, the Localism Act 2011 obliges the Council to have certain arrangements in place to consider complaints about alleged breaches of the Code of Conduct.

#### **RISK IMPLICATIONS**

As has been seen in a number of authorities, serious governance failings can result from poor standards of conduct – whether by officers or members.

Failure to have a robust and effective Code of Conduct is also a reputational risk to the Council.

#### **CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

None

#### **EQUALITY AND SAFEGUARDING IMPLICATIONS**

The Equality Act 2010 introduced the Public Sector Equality Duty. This duty applies to the exercise of all public functions. The duty applies to all of the decisions made in the course of exercising public functions, not just to policy development and high-level decision-making. Those who exercise its functions must be aware of the general equality duty's requirements.

Compliance with the general equality duty involves a conscious approach and state of mind. General regard to the issue of equality is not enough to comply. The Model Code of Conduct includes clear obligations in respect of compliance with equality obligations.

#### **OTHER IMPLICATIONS**

None

#### **CONSULTATION**

As referred to in paragraph 3 above, all members have been offered the opportunity to participate in one of two separate workshops on ethical behaviours. Whilst not all members took up this offer, those members who did participate provided very useful feedback and this has been incorporated in this report.

The Monitoring has also engaged with the Lincolnshire Association of Parish Councils and parish council representatives via the Standards Sub-Committee.

The proposed adoption of the Model Code of Conduct will be considered by the Audit and Governance Committee prior to being presented to Council to consider its adoption.

#### **APPENDICES**

Appendices are listed below and attached to the back of the report: -

|            |   |
|------------|---|
| APPENDIX A | LGA Model Code of Conduct                 |
| APPENDIX B | LGA Guidance on the Model Code of Conduct |

#### **BACKGROUND PAPERS**

No background papers as defined in Section 100D of the Local Government Act 1972 were used in the production of this report.

#### **CHRONOLOGICAL HISTORY OF THIS REPORT**

A report on the adoption of the Model Code of Conduct has not been previously considered by a Council body. However, consideration of the current Code of Conduct has been previously considered as follows:

| <b>Name of body</b>            | <b>Date</b>     |
|--------------------------------|-----------------|
| Council                        | 25 July 2012    |
| Council                        | 10 June 2013    |
| Audit and Governance Committee | 23 March 2018   |
| Council                        | 21 January 2019 |



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| <b>REPORT APPROVAL</b> |  |
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|----------------|---|
| Report author: | Mark Stinson, Assistant Director- Governance and Monitoring Officer |
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| Report author: | Mark Stinson, Assistant Director- Governance and Monitoring Officer |
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| Signed off by: |  |
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| Approved for publication: |  |
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