

Policy and Resources Committee	
Meeting Date	8 February 2023
Report Title	LGA model code of conduct
EMT Lead	David Clifford
Head of Service	Head of Policy, Governance and Customer Services – Monitoring Officer
Lead Officer	
Classification	Open
Recommendations	The committee is recommended to: 1. <i>Recommend the adoption</i> of the LGA model code of conduct to council, as a replacement for the current Swale code of conduct (§ 3.17).

1 Purpose of Report and Executive Summary

- 1.1 This report describes the background to the LGA's development of a model code of conduct, and sets out the main provisions of the code, highlighting differences to the current Swale code and what these differences are intended to address.
- 1.2 Following detailed consideration of the new code and the ways in which it represents an improvement over the current Swale code, the standards committee recommends to this committee and to council the adoption of the LGA code in replacement of the current Swale code.

2 Background

- 2.1 In 2018 the Committee on Standards in Public Life undertook a review into local government ethical standards, publishing its report into the matter in early 2019. The recommendations and best practice suggestions contained in the report have previously been considered by the Swale standards committee, a process which resulted in several improvements to Swale's way of working.
- 2.2 The overwhelming majority of the 26 formal recommendations in the report were aimed at government, at least insofar as their implementation would require changes to legislation. Government published its response to the report in March 2022, essentially declining to introduce any legislative changes to parliament. One of the few recommendations which were not aimed at government was directed to the LGA, which the report recommended should develop a model councillor code of conduct.
- 2.3 The report's executive summary included the following brief justification for this recommendation:

There is considerable variation in the length, quality and clarity of [different local authorities'] codes of conduct. This creates confusion among members of the public, and among councillors who represent more than one tier of local government. Many codes of conduct fail to address adequately important areas of behaviour such as social media use and bullying and harassment. An updated model code of conduct should therefore be available to local authorities in order to enhance the consistency and quality of local authority codes.

- 2.4 Following publication of the report, the LGA's legal team worked in consultation with the sector, including monitoring officers and standards committees, to produce a model code. The Swale standards committee was involved in this work, submitting a detailed response to the LGA's consultation on the first draft of the code. The final version of the new code was published in May 2021.
- 2.5 Swale's current code of conduct was adopted shortly after the coming into force of the relevant provisions of the Localism Act 2011. One of the effects of the 2011 Act had been to hand responsibility for member standards to individual councils within a fairly circumscribed legislative framework, reversing the earlier more centralised and prescriptive approach.
- 2.6 At the time Swale's code was being drafted, work was ongoing among Kent councils to develop a Kent-wide model, which was subsequently adopted by KCC and most districts, but not Swale. The standards committee has previously reviewed the latest version of the Kent code alongside the new LGA model code and generally found the latter to be preferable.
- 2.7 The new LGA code is quite different to Swale's current code. By law, all local authority codes have to be consistent with the seven principles of public life developed by the Committee on Standards in Public Life (the so-called 'Nolan principles': selflessness, integrity, objectivity, accountability, openness, honesty and leadership). However, whereas in Swale's code these are listed at the start of the document and can have a tendency to obscure somewhat the actual substance of the code which is set out in subsequent paragraphs, in the LGA model the principles are listed in an appendix.
- 2.8 With regard to the substance of the two codes, the LGA model is more detailed and less general than Swale's. The Swale code sets out 11 paragraphs describing required behaviours, and while these are always related in some way either to probity or to decency, the relationship is arguably less clear than it could be. The LGA code offers a more specific set of behaviours which must or must not be demonstrated, as well as taking a more considered approach to disclosable interests. It is difficult to argue against the notion that it is simply a better, more comprehensive and more up-to-date code of conduct.
- 2.9 Swale's current code of conduct is provided for information at Appendix I, and the LGA model code, with its own appendices, is set out at Appendix II.

3 Proposals

Summary of the LGA code

- 3.1 The LGA code is structured as a series of statements to the effect of “As a councillor, I do/do not do X”, with these statements being grouped thematically and benefitting from some helpful supplementary explanatory text. A slightly summarised list of these statements is as follows.

As a councillor:

- 1.1 I treat other councillors and members of the public with respect.
- 1.2 I treat council staff with respect and respect the role they play.
- 2.1 I do not bully any person.
- 2.2 I do not harass any person.
- 2.3 I promote equalities and do not discriminate unlawfully against any person.
- 3.1 I do not compromise the impartiality of council officers.
- 4.1 I do not disclose confidential information unlawfully or in the absence of a duty to do so.
- 4.2 I do not improperly use knowledge gained as a councillor for personal advantage.
- 4.3 I do not prevent anyone from getting information they are entitled to by law.
- 5.1 I do not bring my role or my local authority into disrepute.
- 6.1 I do not use my position improperly to the advantage or disadvantage of myself or anyone else.
- 7.1 I do not misuse council resources.
- 7.2 I will, when using council resources, act in accordance with the council's requirements and ensure they are not used for political purposes.
- 8.1 I undertake code of conduct training provided by my local authority.
- 8.2 I cooperate with any code of conduct investigation and/or determination.
- 8.3 I do not intimidate any person likely to be involved with the administration of any investigation or proceedings.
- 8.4 I comply with any sanction imposed on me following a finding that I have breached the code of conduct.
- 9.1 I register and disclose my interests.
- 10.1 I do not accept gifts or hospitality which could give rise to substantive personal gain, or those from persons seeking advantage from the council which could give rise to a reasonable suspicion of influence on my part to show favour.
- 10.2 I register any gift or hospitality with an estimated value of at least £50.

- 10.3 I register any significant gift or hospitality which I have been offered but have refused to accept.
- 3.2 Some of these statements are either more specific and more explicit than what is contained in the current Swale code, or are not covered by the Swale code at all. In the former category are the requirements in sections 2 and 3 on bullying, harassment and compromising the impartiality of officers, which within the Swale code are covered broadly but much less explicitly by paragraphs 5, 9 and 10. In the latter category is section 8 on positive cooperation with the code of conduct. There have been examples in the lifetime of the current council of member conduct which could have been judged to be a breach of one or more of the requirements in section 8.

Treatment of registrable interests

- 3.3 Appendix B of the LGA code sets out the requirements on the registration and disclosure of interests. The regime on disclosable pecuniary interests (DPIs) is prescribed by secondary legislation made under the 2011 Act, and the LGA code's requirements on DPIs are thus identical to Swale's current requirements. With regard to other interests, however, the two codes are quite different.
- 3.4 In place of Swale's 'disclosable non-pecuniary interests', the LGA code sets out 'other registrable interests'. The fact that such interests are 'registrable' rather than merely 'disclosable' is of relevance in contrast to interests which are disclosable but not registrable, a class of interests (described in the next section) which are not covered by the Swale code. The LGA code's list of other registrable interests is similar to Swale's but slightly expanded. It includes:
- Any unpaid directorships. (Paid directorships are DPIs.)
 - 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.
 - Any body:
 - Exercising functions of a public nature;
 - Directed to charitable purposes; or
 - One of whose principal purposes includes the influence of public opinion (including any political party or trade union).
- 3.5 A significant difference between the LGA code and the Swale code is that where a matter to be discussed at a council meeting directly relates to an 'other registrable interest', the consequences are the same as if the interest was a DPI, so that the member must generally not participate in the discussion or vote.
- 3.6 In this sense, 'directly relates to' means that in the case of a planning application, for example, the application is made by, or the property is owned by, the relevant body. This is intentionally very narrow. The situation in which a relevant body could more broadly be affected by a decision, e.g. in relation to a planning

application for a neighbouring property, is covered by the two-tier approach to disclosable non-registrable interests described below.

Bias and the treatment of disclosable non-registrable interests

- 3.7 A reasonable criticism of the legal framework on DPis is the narrowness of its applicability, with councillors being required to disclose and register the interests only of themselves and their partners. This means that as far as the interests regime is concerned, a member could legitimately participate in a council discussion and vote on a decision about an interest, e.g. a planning application, of their parent, child, business partner or best friend of many years' standing.
- 3.8 In fact such a scenario would generally be covered by the common law provisions on presumed and apparent bias, and for the sake of the robustness of the decision, members in such a situation would be well advised to recuse themselves from participation, but there would be nothing in the code of conduct to compel this. The LGA code on the other hand does regulate such participation, taking a two-tier approach. In the first tier, where a matter to be discussed 'directly relates' to the financial interest or wellbeing of a member or that of a relative or close associate, the member is obliged to treat the matter as if they had a DPI in it.
- 3.9 The second tier seeks to resolve the tension between the common law provisions on bias on the one hand and the narrowness of the legal meaning of 'having an interest in' a matter, as established by the 2011 Act, on the other. It does this by establishing that when a matter to be discussed 'affects' either a member's own financial interest or wellbeing or that of a relative, a close associate, or a body listed as an 'other registrable interest' of the member, the member must disclose the interest. In determining whether the member may participate in the discussion and vote, two tests are then applied.
- 3.10 The first test is whether the member's financial interest or wellbeing (or that of the persons and bodies associated with them, as described) is affected to a greater extent than that of other inhabitants of the same ward. The second test is the common law test of whether a reasonable and informed observer would believe the member's view of the public interest to be affected by the existence of the interest. If, but only if, either of these tests is met, the existence of the interest is to be treated as if it were a DPI.
- 3.11 In its response to the LGA consultation on the draft code, the Swale standards committee expressed some doubt as to the wisdom of extending the code of conduct into the territory of bias in this way. The final version of the code has resolved these issues, so that the code can now operate as an effective mechanism for protecting council decision-making from members who may have a bias but still wish to participate in the decision. This is a protection which the current Swale code does not offer.

Implementation of a decision to adopt the LGA code

- 3.12 This would seem to be a timely moment to adopt a new code of conduct, with the all-out election in May likely to result in a number of new councillors being elected. There has been a somewhat renewed interest in, and focus on, member standards in Swale in the last year or so, and adoption of a new code could be a means of further raising the profile of member standards across the council.
- 3.13 It would necessarily entail a comprehensive programme of training for all members on the provisions of the new code, which in itself could have a beneficial effect in terms of raising awareness of basic requirements, as well as of the impact of adverse behaviour on the people who are victims of it. This training would sit well with the wider training to new and existing members which the member development working group will be looking to roll out after the election.
- 3.14 While training on the detail of the new code could most beneficially be undertaken when the new council is in place, it is important that all members of the council being asked to adopt the new code have an understanding of the implications for them and the council in terms of the differences between the current code and the new one. A member briefing session has therefore been arranged prior to the February council meeting, which will be an opportunity for members to familiarise themselves with the new code and ask questions about its operation.

Town and parish councils

- 3.15 As sovereign bodies, the borough's town and parish councils are free to adopt whichever code of member conduct they believe is most appropriate for them, but complaints under the code are all handled by the Swale monitoring officer. There have traditionally been two different codes in operation in different parishes, the Swale code and the model parish code developed by the National Association of Local Councils.
- 3.16 Adoption of the LGA code by Swale (and potentially also by some parishes) would mean that there would in future be three rather than two different codes in operation in the borough, in addition to the Kent code covering KCC members. However, the existence of two codes has never caused any significant issues, as long as 'twin-hatted' members are always clear on which code is applicable to them depending on the capacity in which they are operating, and it is not anticipated that the introduction of a third code to this mix would create any significant problems.

Recommendations

- 3.17 The Policy and Resources committee is now ***recommended*** to propose the adoption of the LGA model code of conduct to council as a replacement for the current Swale code of conduct.

4 Alternative Options Considered and Rejected

- 4.1 The foregoing sections of the report set out why the standards committee believes the LGA model code to be a superior code, and one that is better suited to Swale's needs, than the existing Swale code. However, there is no legal obligation to adopt the model code, and the retention of the current code is an entirely feasible option if that is members' preference.

5 Consultation Undertaken or Proposed

- 5.1 Members of the standards committee, led by the standards working group, have been closely involved in the decision to recommend adoption of the new code to this committee and to council. The constitution working group considered a draft of this report at its meeting on 11 January and endorsed the contents. The executive management team has also reviewed the new code and confirmed its agreement with the standards committee that it is better suited to Swale's needs than the existing code.
- 5.2 As described above, the intention is for a briefing session prior to the February council meeting to enable all members to become familiar with the new code and ask questions about it before being asked to adopt it. More comprehensive training on the new code would then form part of the training offer to members after the election during the initial months of the new council.

6 Implications

Issue	Implications
Corporate Plan	Maintaining and enforcing high standards of member conduct is essential to the achievement of all of the council's corporate strategic objectives. Adoption of a new code of conduct would particularly support the objectives in the fourth corporate plan priority, to 'renew local democracy and make the council fit for the future'.
Financial, Resource and Property	No implications identified at this stage.
Legal, Statutory and Procurement	The legal implications are as set out in the body of the report. Adoption of the LGA code could have a positive impact on Swale's ability to prevent members with presumed or apparent bias from weakening the robustness of council decisions by participating in them. The introduction of the new code, perhaps particularly the enhanced provisions on interests, would need to be accompanied by a comprehensive programme of training for all members.
Crime and Disorder	No implications identified at this stage.

Environment and Climate/Ecological Emergency	No implications identified at this stage.
Health and Wellbeing	No significant concrete implications identified at this stage, but the effects of adverse member behaviour on the health and wellbeing of those who are the victims of it, whether other members, officers or members of the public, should not be underestimated. The LGA model code is arguably better suited to addressing problems of bullying and harassment than is the current Swale code.
Safeguarding of Children, Young People and Vulnerable Adults	No implications identified at this stage.
Risk Management and Health and Safety	No implications identified at this stage.
Equality and Diversity	A requirement on members to promote equality and not to discriminate unlawfully is included in the LGA model code. While a similar requirement can be read into the current Swale code, particularly paragraphs 3, 8, 9 and 10, it would probably be preferable to have the requirement stated explicitly and with sufficient clarity as to facilitate a more straightforward evaluation of alleged breaches.
Privacy and Data Protection	No implications identified at this stage.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Swale's current code of conduct
- Appendix II: LGA model code of conduct

8 Background Papers

8.1 There are no background papers.

APPENDIX I: SWALE'S CURRENT CODE OF CONDUCT

As a Member or co-opted Member of *Swale Borough Council* I have a responsibility to represent the community and work constructively with our staff and partner organisations to secure better social, economic and environmental outcomes for all.

In accordance with the Localism Act provisions, when acting in this capacity I am committed to behaving in a manner that is consistent with the following principles to achieve best value for our residents and maintain public confidence in this authority:

SELFLESSNESS: Holders of public office should act solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

INTEGRITY: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

OBJECTIVITY: In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

ACCOUNTABILITY: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

OPENNESS: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

HONESTY: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

LEADERSHIP: Holders of public office should promote and support these principles by leadership and example.

The Act further provides for registration and disclosure of interests and in Swale Borough Council this will be done as follows:

Registering and declaring pecuniary and non-pecuniary interests

I must, within 28 days of taking office as a Member or co-opted Member, notify my authority's Monitoring Officer of any disclosable pecuniary interest as defined by regulations made by the Secretary of State, where the pecuniary interest is mine, my spouse's or civil partner's, or is the pecuniary interest of somebody with whom I am living with as a husband or wife, or as if we were civil partners.

In addition, I must, within 28 days of taking office as a Member or co-opted Member, notify my Authority's Monitoring Officer of any disclosable pecuniary or non-pecuniary interest which my authority has decided should be included in the register.

If an interest has not been entered onto the Authority's register, I must disclose the interest to any meeting of the Authority at which I am present, where I have a disclosable interest in any matter being considered and where the matter is not a

'sensitive interest'.¹

Following any disclosure of an interest not on the Authority's register or the subject of pending notification, I must notify the Monitoring Officer of the interest within 28 days beginning with the date of disclosure.

Unless dispensation has been granted, I may not participate in any discussion of, vote on, or discharge any function related to any matter in which I have a pecuniary interest as defined by regulations made by the Secretary of State. Additionally, I must observe the restrictions my Authority places on my involvement in matters where I have a pecuniary or non-pecuniary interest as defined by my Authority.

The following sets out the disclosable pecuniary interests I am required to register under the Code of Conduct, The Localism Act and the SI No. 1464 The Relevant Authorities (Disclosable Pecuniary Interests Regulations 2012):

<i>Subject</i>	<i>Prescribed description</i>
Employment, office, trade, profession or vacation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the relevant authority) made or provided within the relevant period in respect of any expenses incurred by M in carrying out duties as a member, or towards the election expenses of M. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992 ⁽²⁾ .
Contracts	Any contract which is made between the relevant person (or a body in which the relevant person has a beneficial interest) and the relevant authority— (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged.
Land	Any beneficial interest in land which is within the area of the relevant authority.
Licences	Any licence (alone or jointly with others) to occupy land in the area of the relevant authority for a month or longer.

¹ A 'sensitive interest' is described in the Localism Act 2011 as a Member or co-opted Member of an authority having an interest, and the nature of the interest being such that the Member or co-opted Member, and the authority's monitoring officer, consider that disclosure of the details of the interest could lead to the Member or co-opted Member, or a person connected with the Member or co-opted Member, being subject to violence or intimidation.

⁽²⁾ 1992 c. 52.

Corporate tenancies	Any tenancy where (to M's knowledge)— (a) the landlord is the relevant authority; and (b) the tenant is a body in which the relevant person has a beneficial interest.
Securities	Any beneficial interest in securities of a body where— (a) that body (to M's knowledge) has a place of business or land in the area of the relevant authority; and (b) either— (i) the total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or (ii) if the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which the relevant person has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

The following sets out disclosable non-pecuniary interests which my authority has decided should be included in the register.

<i>Subject</i>	<i>Description</i>
Appointments and nominations by the Authority	Name the outside body and the position you are appointed or nominated to e.g. member, trustee, director, observer etc. and name the Authority which appointed you e.g. Swale Borough Council.
Bodies which exercise functions of a public nature	Name the body and say what position you hold e.g. Councillor XYZ Parish Council, Governor ABC School etc.
Bodies which influence public opinion or policy (including any political party or trade union)	Name the body and say what position you hold e.g. secretary or member of the ABC for Action Group, or member of ABC Trade Union

As a Member of Swale Borough Council, my conduct will in particular address the statutory principles of the Code of Conduct by:

1. Championing the needs of residents – the whole community and in a special way my constituents, including those who did not vote for me - and putting their interests first.
2. Dealing with representations or enquiries from residents, Members of our communities and visitors fairly, appropriately and impartially.
3. Not allowing other pressures, including the financial interests of myself or others connected to me, to deter me from pursuing constituents' casework, the interests of the Swale area or the good governance of the Authority in a proper manner.
4. Exercising independent judgement and not compromising my position by placing myself under obligations to outside individuals or organisations who might seek to influence the way I perform my duties as a Member/co-opted Member of this authority.
5. Listening to the interests of all parties, including relevant advice from statutory and other professional officers, taking all relevant information into consideration, remaining objective and making decisions on merit.
6. Being accountable for my decisions and co-operating when scrutinised internally and externally, including by local residents.
7. Contributing to making this Authority's decision-making processes as open and transparent as possible to enable residents to understand the reasoning behind those decisions and to be informed when holding me and other Members to account but restricting access to information when the wider public interest or the law requires it.
8. Behaving in accordance with all our legal obligations, alongside any requirements contained within this authority's policies, protocols and procedures, including on the use of the Authority's resources.
9. Valuing my colleagues and staff and engaging with them in an appropriate manner and one that underpins the mutual respect between us that is essential to good local government.
10. Always treating people with respect, including the organisations and public I engage with and those I work alongside.
11. Providing leadership through behaving in accordance with these principles when championing the interests of the community with other organisations as well as within this authority.

APPENDIX II: LGA MODEL CODE OF CONDUCT

[PDF document provided separately]