

REPORT TO FULL COUNCIL – 14 JANUARY 2021

CONSULTATION ON REVIEW OF THE COUNCILLORS' CODE OF CONDUCT

1 Reason for Report / Summary

- 1.1 This report presents the draft response to the consultation on the revised Councillors' Code of Conduct and seeks approval prior to submission to the Scottish Government.

2 Recommendations

The Council is recommended to:

- 2.1 Consider and approve the draft response to the consultation on the review of the Councillors' Code of Conduct at Appendix 1;**

3 Purpose and Decision Making Route

- 3.1 The Scottish Government has launched a consultation on a revised version of the Councillors' Code of Conduct which can be found at <https://consult.gov.scot/housing-and-social-justice/the-councillors-code-of-conduct/>. At its meeting on 19 November 2020 Full Council instructed the Head of Legal and People to gather views on the revised Code of Conduct through a series of drop-in sessions with Elected Members, which took place in December 2020.
- 3.2 The deadline for submission of responses to the consultation is 8 February 2021. The views expressed by Elected Members have been collated and form the basis of the proposed response to the consultation included in Appendix 1. The agreed response shall be submitted to the Scottish Government by the Head of Legal and People in advance of the deadline.

4 Discussion

- 4.1 As was reported to Full Council in November 2020, the review of the Code of Conduct has presented an opportunity to clarify and refine certain areas of the document which have previously proved difficult to navigate, such as the provisions on declaration of interests.
- 4.2 Three sessions were held in December with Elected Members, each of which covered a different section of the Code, comparing both the current and revised provisions and enabling individual elements to be discussed. Whilst there was a divergence of views on some of the new provisions, there was general agreement on the key aspects of the changes such as provisions around gifts and hospitality, declarations of interests, respect for others and lobbying which can be summarised as:-
- (i) There needs to be clarity as to the extent the Code impacts on the private life of an Elected Member, with concerns that the revised section

3.1 could be perceived to be widening the Respect and Courtesy provisions. Clear guidance to sit alongside the Code will be crucial in assisting Members in understanding their duties.

- (ii) There are concerns about the removal of the gifts and hospitality register and relaxation on declarations of interests for external appointments in terms of the impact on public confidence, openness and transparency. It is suggested that the new provisions on these matters are reviewed.
- (iii) The new provisions, including those in relation to bullying and harassment and relationships with officers would benefit from further detail on how these sections should be applied in practice.
- (iv) The streamlining of the provisions on declarations of interests are welcomed subject to the concerns expressed regarding treatment of external appointments.
- (v) In general, further guidance to complement the Code will be key in ensuring Members have a clear steer on what their responsibilities are under the revised Code.

4.3 The full draft response forms Appendix 1 to this report and Full Council is asked to approve it for submission to the Scottish Government. As noted above, there were areas where views were mixed, and the draft response largely reflects the majority view whilst recognising the importance of highlighting the divergence of opinion in key sections.

5 Council Priorities, Implications and Risk

5.1 This report helps deliver on all six Strategic Priorities and in particular the principle that underpins them of “right people, right place, right time”. A fit for purpose Code of Conduct ensures that Councillors can maintain and strengthen the trust of their communities in delivering the priorities.

5.2 The table below shows whether risks and implications apply if the recommendation(s) is(are) agreed.

Subject	Yes	No	N/A
Financial			N/A
Staffing			N/A
Equalities			N/A
Fairer Scotland Duty			N/A
Town Centre First			N/A
Sustainability			N/A
Children and Young People's Rights and Wellbeing			N/A

5.3 There are no equalities, staffing or financial implications arising from this report. It is noted that the protected characteristics relating to equalities have been set out more clearly in the proposed Code of Conduct, supporting the Council's position that equalities underpin everything that the Council, its Councillors and staff do.

5.4 The following Risks have been identified as relevant to this matter on a [Corporate Level](#):

- ACCORP002 - Changes in government policy, legislation and regulation

6 Scheme of Governance

6.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and had no comments to make and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

6.2 Full Council is able to consider this item as the Councillors' Code of Conduct applies to all Elected Members and the matter is not therefore delegated to any Council Committee. This report therefore relates to the approval of an external consultation that has not been properly delegated to any other Committee in accordance with Section A.9.1 of the [List of Committee Powers in Part 2A](#) of the Scheme of Governance.

Ritchie Johnson, Director of Business Services

Report prepared by Ruth O'Hare, Acting Legal Services Manager (Governance)
Date: 29 December 2020

Appendix 1 – Draft Response

APPENDIX 1

Councillors' Code of Conduct

Revision Consultation questions

We are specifically seeking your views on the amendments that have been made to the Code, which are highlighted in the accompanying draft document. However, your views on any aspect of the revised Code are welcome. We ask for your comments on the changes made in each section of the Code. If you wish to comment on a specific provision, rather than on a section as a whole, please provide a reference to that provision(s) as part of your response i.e. (Provision 3.10).

1. Do you agree that there is a need to revise the Councillors' Code of Conduct?

It is acknowledged that some areas of the current Code of Conduct would benefit from review and greater clarity. However, views were expressed that the current version of the Code is largely fit for purpose and therefore a smaller, targeted and focused review, looking at key areas such as Declarations of Interests, would have been more beneficial than the wider revisions to the document that are proposed.

Consultation with Elected Members of Aberdeenshire Council was carried out in the preparation of this response and their views are reflected in the answers to the questions, below.

2. Do you have any comments on the changes proposed for Section 1: Introduction to the Code of Conduct?

The responsibilities section is helpful, however Elected Members have concerns about the overall tone of the wording which is felt to be patronising at parts. Reference is made to the response to question 10 below which gives further detail on this point.

3. Do you have any comments on the changes proposed for Section 2: Key Principles of the Code of Conduct?

There are no specific comments on the changes to the Key Principles

4. Do you have any comments on the changes proposed for Section 3: General Conduct?

Respect and Courtesy

The wording of 3.1 of the current Code states that the rules of good conduct must be observed in all situations where "you act as a Councillor or are perceived to be acting as a Councillor". The proposed section 3.1 appears to broaden out the duties under the Code to any situation a Councillor may find themselves in, whether acting as a Councillor or not. This is a cause of significant concern as it has the potential to blur the lines between a Councillor's public and private life. It is recognized that Councillors must ensure compliance with their duties under the Code in the carrying out of their public role, however Elected Members feel strongly that there must be a clear

delineation between public and private life and the changes to 3.1 remove this important distinction.

It is therefore suggested that the wording at 3.1 should be amended to “*I will treat everyone with courtesy and respect at all times **when acting as a councillor or when I am perceived to be acting as a councillor.** This includes in person, in writing, at meetings, when I am representing the Council and when I am online and using social media.*”

There is no objection in principle to the inclusion of social media at 3.1 provided the Code makes it clear that this only applies when acting as a Councillor or being perceived as such. There needs to be flexibility in the Code to allow for private social media accounts and remove any risk of the general public assuming that everything published by a Councillor on social media is done so in their Councillor capacity. With the increasing use of social media it is crucial that Councillors are aware of what their duties are, for example in relation to promotion of political views in online forums. The provisions on social media in the Code should therefore be expanded on to provide additional detail on how Councillors navigate this environment and clear guidance to complement the Code on this point would be required.

The reference to the public sector equality duty at Section 3.2 is welcomed, whilst noting that this is already enshrined in law in terms of Councillors’ responsibilities under the Equalities Act 2010.

Bullying and Harassment

The provisions on bullying and harassment in the existing Code at section 3.6 should remain. Elected Members feel the new section 3.3 is ambiguous and subjective. There is a lack of clarity on who ultimately determines what constitutes bullying and harassment, in reference to the words “could amount” at section 3.3. It is also not clear what would fall within the definition of this type of behaviour. There is therefore concern that the interpretation of this section could be problematic and open to manipulation.

If the new provisions are introduced clear guidance with specific examples would aid Elected Members in the understanding of this section albeit it is recognised that it is difficult to capture a definition that would be wide enough to cover all relevant behaviour.

Relationship with employees

Sections 3.6 and 3.7 of the proposed code on involvement in operational management would benefit from some clarity on what is deemed to be operational management and what is not. The existing guidance on this issue from the Standards Commission is noted but expanded wording in the Code itself would be beneficial. It is recognised that officers must be entrusted with operational matters but the extent to which Elected Members can get involved with such matters in order to serve their constituents is unclear. The provisions at both Section 3.6 and 3.7 do not provide any clarity on what is meant by operational management. In balancing the requirements of a Councillor’s policy and scrutiny role alongside the relationship with officers, some further detail in the Code on this point would be useful.

Elected Members feel there is a particularly negative and accusatory tone to this section towards Councillors which is unhelpful. The proposed Code does not reflect the culture of partnership working and effective relationships that exist between Elected Members and officers at Aberdeenshire Council and that is cause for concern in respect of our Members feeling that they have ownership of the Code.

Gifts and Hospitality

The gifts and hospitality register should not be removed and the provisions in the current Code at sections 3.9 to 3.15 should remain. There is significant concern about the removal of the register in terms of the impact on openness and transparency, notwithstanding the tightening of the general rules in relation to gifts and hospitality. Councillors are a key part of their communities, and as such offers of gift and hospitality will be forthcoming on a regular basis. It can often be difficult to turn such offers down without causing offence. Accordingly it is felt that the new provisions may be challenging to apply in practical terms. Elected Members want to continue to be open and transparent in respect of such matters and feel that the dilution of the gifts and hospitality provisions with the removal of the register would impede them in fulfilling key principles in the Code of Conduct including accountability, openness and honesty.

If the new provisions are implemented, comprehensive guidance would be required to sit alongside them. The definitions of what will be permitted in terms of gifts and hospitality are not considered to be as robust as those in the current Code and guidance will therefore be key in assisting Elected Members in their application of the rules.

5. Do you have any comments on the changes proposed for Section 4: Registration of Interests?

Remuneration

There is some confusion when comparing the wording of Section 4.4 (f) which requires an Elected Member to register any remuneration received from a body to which they are appointed or nominated to by the Council and Section 4.5 which states "*I do not have to register any work I carry out on behalf of the Council in my capacity as councillor*". Some clarity on this wording would be helpful. That said, the provisions at 4.4(f) are considered to be an important addition in order to reflect those external appointments where Elected Members receive additional remuneration.

Property and Land

The recognition of the safety and security issues of Councillors is welcomed at Section 4.19 however some Elected Members feel that the wording does not go far enough, and that no property or land information should be in the public domain. Instead it should be held securely by the monitoring officer. Given the public role Elected Members have, some still feel their homes could be potentially identified, even with the reduced ward area information.

Gifts and Hospitality

As has been covered at question 4, there is a strong sense of feeling that the provisions should not be changed.

6. Do you have any comments on the changes proposed for Section 5: Declaration of Interests?

The new three stage process is much clearer and straightforward. However guidance will be required in terms of managing public perceptions as it is likely that the application of the objective test may be now subject to increased scrutiny by the public.

There is considerable concern about the relaxation on the requirements for outside bodies at 5.3.f where a Councillor is appointed or nominated to that body by the Council. An example is being able to take part in a funding application for an outside body to which a Councillor is appointed to, which would be permitted under the new provisions. Elected Members feel uncomfortable with the public perception around such a situation and the dilution of the Code with regards to outside bodies. There is similar discomfort in relation to the proposed removal of the requirement to declare appointments that are presently covered by specific exclusions, in view of the perceived removal of transparency around those appointments. To give an example, Members will no longer have to declare appointments to the Cairngorms National Park Authority. The reference to outside appointments at 5.3.f should therefore be reviewed with a view to ensuring Councillors are seen to be acting in an open and transparent manner.

It is generally felt that further guidance on how Councillors manage dual roles and associated conflicts where they have responsibilities to the Council and responsibilities to an external body to which they are appointed or nominated to as a Councillor (e.g. statutory joint boards) would be welcomed to complement the new provisions. Similarly, where a Councillor is appointed to a public body (e.g. COSLA, Improvement Service) in a personal capacity or where they may be undertaking personal business but are perceived to be acting as a Councillor, guidance would be helpful on how to manage these particular situations.

7. Do you have any comments on the changes proposed for Section 6: Lobbying and Access?

Constituent Enquiries

The confirmation that not all constituent enquiries require a response is welcomed. Having clarity that there is no duty to respond affords protection for Elected Members and enables the use of their own judgement and discretion. Guidance on how this should be approached in practice would be helpful to assist Elected Members in understanding when a nil response would be appropriate and to manage the expectations of constituents. It is recognised that there will be particular circumstances where it would be generally not be appropriate to respond, for example in the case of persistent complainers or abusive behaviour. However there is also a balance to be struck in ensuring that a lack of response does not become commonplace given the duty Elected Members have to their constituents.

Community Engagement

The proposed wording at Section 6.4 is not clear as to what undertaking “*such work in public*” means, particularly in the current climate with increasing use of virtual environments and with Elected Members working from home. Further clarity is required as it is felt that this section is not currently capable of practical application.

8. Do you agree to the changes proposed for Section 7: Taking Decisions on QuasiJudicial or Regulatory Applications?

The new sections are much more thorough in terms of what a Councillor can and can't do and reflect much of the training Elected Members in Aberdeenshire have received for many years. However, there is a concern about the practical implications of 7.4(a) and whether this would require an Elected Member taking part in a planning application to attend every stage of the decision-making process, e.g. site visits, pre-determination hearings, area committees and Full Council. This could have a significant impact on how planning applications are determined in Aberdeenshire. Clarity would be welcomed on this point. Members could also fall foul of sections 7.5(f),(g) and (h) if they were to express views at a pre-determination hearing or at an Area Committee, which is currently addressed by section 7.18 of the current Code. It is therefore suggested that the wording of these provisions would benefit from review.

The provisions in section 7.8 require some further clarification. To give an example the wording “*I will not express any view that suggests I have a closed mind on the policy or strategic issue*” is considered to be subjective as it is not clear to whom Councillors are prohibited from expressing views. The provision of further detail would assist in the application of this section.

Site visits

It is surprising the proposed Code does not cover the issue of site visits without officers present and consideration should be given to including wording to make the position clear on this, particularly in light of recent decisions of the Standards Commission on this issue. It would also be a good opportunity to reflect alternatives to site visits such as the use of videos and drones and to clarify that equalities elements of a site visit are reflected to all members, perhaps with reference to the new equalities provisions in section 3.

9. Overall, how clear do you find the proposed revised Code?

Very clear Mostly clear **Sometimes unclear** Very unclear

Please tell us where you think the clarity of the Code could be improved, and how:

The responses to the above questions clarify where concerns have been raised together with suggestions for improvement.

10. Do you have any other comments or suggestions about any aspect of the revised Code?

First person

The response to the change to first person elicits a mixed response. Some Elected Members feel that it is helpful and that it will help them take ownership of the Code of Conduct. Others feel that the change is not helpful and has a much more severe tone. The way that the document is written with “I will/I will not” is very personal and was also read by some as being patronising. The use of “I will/will not” also raised queries from members about whether each member will require to formally sign a copy of the Code of Conduct, notwithstanding that it’s a legislative requirement, or whether acceptance of office will remain sufficient.

Simpler language

The attempt to simplify the Code of Conduct, for some, has left ambiguity in areas that used to be clear and a feeling that the simplification undermines the gravitas of the document. Examples are given throughout this response. The purpose of the Code of Conduct and its importance has been undermined by the use of simpler language. It feels less formal which dilutes its importance.

Dispensations

Clarity on whether the existing dispensations in place will continue, particularly regarding Integration Joint Boards and City Region deals, would be welcomed.