

City of Edinburgh Council

10:00am, Thursday, 4 February 2021

Councillors' Code of Conduct Consultation

Executive/routine
Wards
Council Commitments

1. Recommendations

- 1.1 To note the closing date for responses to the Scottish Government's consultation on the Councillors' Code of Conduct is 8 February 2021.
- 1.2 To agree that the Council will not support proposals set out under Section 5: Declarations of Interest of the consultation document.
- 1.3 To agree the proposed Council response to the consultation at Appendix 1.

Andrew Kerr

Chief Executive

Contact: Hayley Barnett, Corporate Governance Manager

Strategy and Communications Division, Chief Executive's Service

E-mail: Hayley.barnett@edinburgh.gov.uk | Tel: 0131 529 3996

Report

Councillors' Code of Conduct Consultation

2. Executive Summary

- 2.1 The report sets out a proposed Council response to the Scottish Government's consultation on the Councillors' Code of Conduct.

3. Background

- 3.1 Section 1 of the Ethical Standards in Public Life etc. (Scotland) Act 2000 requires the Scottish Ministers to issue a Code of Conduct for Councillors (the Code).
- 3.2 The current version of the Code was originally issued in 2010 following a limited review of the Code that the Scottish Government carried out in 2009. A further amendment was published in 2018 which addressed the specific issue of councillors' membership on regional transport partnerships.
- 3.3 The aim of the Code is to set out clearly and openly the standards that councillors must comply with when carrying out their council duties. All local authority councillors in Scotland are obliged to comply with the Code and with any guidance on the Code issued by the Standards Commission for Scotland.
- 3.4 The Scottish Government considered that many developments have occurred over the last ten years since the Code was last substantially reviewed and that it was important to take account of such changes and to provide users with the opportunity to comment on the Code as part of a new review.
- 3.5 The key purpose of the review is to make the Code easier to understand and to take account of developments in our society such as the role of social media. There is also an aim to strengthen the Code to reinforce the importance of behaving in a respectful manner and to make it clear that bullying and harassment is completely unacceptable and will not be tolerated.
- 3.6 Any updated Code would have to be laid before and approved by a resolution of the Scottish Parliament.
- 3.7 Following consideration of the consultation documentation, officers have drafted a proposed response for consideration as the City of Edinburgh Council's response, attached at Appendix 1.

4. Main report

- 4.1 The Scottish Government has worked closely with representatives of Local Authorities, through the Society of Local Authority Lawyers & Administrators (SOLAR) in developing the proposals set out in the consultation paper.
- 4.2 The key proposed changes to note are:
 - 4.2.1 A general rewrite changing the Code to the first person and adopting plain English wherever possible;
 - 4.2.2 A greater emphasis on addressing discrimination and unacceptable behaviour;
 - 4.2.3 Stronger rules around accepting gifts;
 - 4.2.4 A substantial rewrite of Section 5, establishing three clear and distinct stages to determine a declaration – Connection – Interest – Participation;
 - 4.2.5 Significantly liberalises the guidance/rules around being a council-appointed representative on an outside body;
 - 4.2.6 Makes clearer the rules around access and lobbying;
 - 4.2.7 Section 7 has been substantially reworked in order to provide a more generic approach that can cover all types of applications and decisions, and not be so heavily focussed on planning matters.
- 4.3 Officers are supportive of many of the proposed changes; specifically, to make the code simpler and more user friendly with the use of the first person and plain English, the strengthened wording around the use of social media, strengthening of key areas including key principles and bullying and harassment, and further clarity around access and lobbying.
- 4.4 Throughout the response officers have also proposed clarification on several points including Section 3.7: *I will not undermine any individual employee or group of employees, or raise concerns about their performance, conduct or capability in public.* Officers are supportive of the principle that the performance, conduct or capability of individual officers or groups of officers should not be criticised in public however, as part of their scrutiny role, we recognise the importance of councillors scrutinising and raising concerns around service performance. Concerns around how a department, service or team is performing can be legitimately raised within a public setting (Council or committee) without raising issues of conduct and capability.
- 4.5 Further, there are two areas flagged within the response that cause notable concern:
 - 4.5.1 Section 3 - General Conduct, Gifts and Hospitality
The intention of this section is to clarify that councillors will no longer be allowed to accept gifts and hospitality that members of the public would

otherwise have to pay for. The current wording (and layout) is confusing and officers consider that it potentially contradicts sections of the explanatory note. Moreover, officers are concerned that the current wording may restrict councillors in carrying out their role. The current Code states that councillors can accept hospitality that would normally be associated with their duties as a councillor. This, for example, would allow the Convener of Culture and Communities to attend a cultural event which would normally require payment. This seems reasonable and is retained in the revised Code. However, the explanatory note states that councillors would no longer be permitted to accept hospitality that the public would pay for such as the theatre or sporting event. This would therefore restrict councillors in Edinburgh from attending important cultural and festival events that the Council supports. It is also unclear what this would mean for councillors who are also non-executive directors of cultural companies such as Capital City Theatres Trust. This section would benefit from being further clarified and amended to allow for councillors to attend events such as those noted in the example above.

4.5.2 There is also a question on what the benefits are of not including a gifts and hospitality register in the revised Code. This seems to provide little benefit to the councillor, Council or the public at the risk of undermining confidence in a public body or individual. Officers believe the current practice of recording gifts and hospitality should remain.

4.5.3 Section 5 – Declarations of Interest

The intention of this section is to create a three staged process in relation to Councillors' making a declaration - Connection – Interest – Participation. Firstly, a councillor should consider if they have a connection and then apply the objective test at stage 2 (interest). Therefore, based on the proposals a councillor could have a connection but not declare the interest. A connection can be stated publicly if the councillor wishes to do so for transparency reasons.

4.5.4 Where officers have a concern is that the draft proposal also lists 'Being a member of a body to which I have been appointed or nominated by the Council as a Councillor representative' as an exemption where no declaration would be required. Currently, a councillor is permitted to take part and vote (in all but quasi-judicial matters) as long as they also declared the interest and only for organisations that had been set up for the purposes of providing a Council service and where the Council had a contract with the organisation. This for example covers all the Council's ALEOs and seems an appropriate and proportionate rule.

4.5.5 Under the new proposed wording councillors would not be required to declare any interest and could take part in consideration of the item for any organisation that the Council had appointed them to. This Council has a large number of councillors who sit on outside bodies for a variety of reasons, sometimes historic and sometimes required by the relevant organisation's

articles of association. This means that there will be instances where conflicts of interest could be perceived to exist and there being no requirement to declare an interest could undermine public confidence in the Council's decision making and of the integrity of individual councillors and the Council. For example, under the revised Code councillors could take part in a decision to provide grant funding to an organisation that they are a director of without declaring any interest whatsoever. This could significantly undermine the grant process and undermine confidence in the impartiality of the Council and councillor. It is unclear what the benefits are of taking such a liberalised approach for either the Council, councillors or the public and officers suggest this is amended. Officers believe that the current system, whereby declarations are made but a councillor can still vote, is a far clearer process which ensures transparency at the point of decision and should be retained.

5. Next Steps

- 5.1 If approved, the response will be submitted to the Scottish Government. Any updated Code would have to be laid before and approved by a resolution of the Scottish Parliament.

6. Financial impact

- 6.1 There are no direct financial impacts of this report.

7. Stakeholder/Community Impact

- 7.1 Key officers have been consulted on the proposed response. A presentation on the consultation was offered to all political groups.

8. Background reading/external references

- 8.1 [Councillors' Code of Conduct: Consultation 2020](#)

9. Appendices

- 9.1 Appendix 1 - Proposed City of Edinburgh Council consultation response

Councillors' Code of Conduct Revision



RESPONDENT INFORMATION FORM

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our privacy policy:
<https://www.gov.scot/privacy/>

Are you responding as an individual or an organisation?

- Individual
 Organisation

Full name or organisation's name

The City of Edinburgh Council

Phone number

0131 529 3996

Address

4 East Market Street
Edinburgh

Postcode

EH8 8BG

Email

Hayley.barnett@edinburgh.gov.uk

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
 Publish response only (without name)
 Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again

in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

No

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?

Yes No

Please provide information to support your response:

Yes. The Code has not been significantly reviewed since 2010 and this provides an opportunity to update the Code to make it more user-friendly for councillors and the public. The use of the first person and plain English is welcomed.

The proposed removal of guidance, explanatory and background information from the existing Code is welcome to make the Code more user-friendly, however it should be included in the Standards Commission's guidance on the revised Code. We support the use of case examples within this guidance and within support and training materials provided by the Standards Commission.

A review also provides an opportunity to take account of developments in our society such as the role of social media and strengthen key areas including bullying and harassment.

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

Yes No

Please provide your comment:

CEC welcomes the changes in this section. The 'My Responsibilities' section clearly sets out councillors' responsibilities and distinguishes responsibilities from background/introductory information as set out in the current version.

We also welcome that the statement outlining when the Code applies has been moved to this section. This clearly demonstrates that all provisions in the Code, and not just the rules of good conduct in Section 3, apply in the circumstances outlined.

We suggest that paragraph 1.6 should be made subject to paragraph 1.5.

We also suggest the wording of 1.8, sentence 2 is reconsidered. The paragraph would benefit from further context (as set out in 1.1 of the current code) to provide clarity for Councillors.

As set out in paragraph 1.9, the Code itself and associated guidance cannot provide for all circumstances, we would support the use of case examples within this guidance and within support and training materials provided by the Standards Commission to support councillors in their understanding of the Code.

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

Yes No

Please provide your comment:

CEC supports the inclusion and wording of the key principles of the Code of Conduct, as set out in the consultation.

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

Yes No

Please provide your comment:

CEC supports the intention to strengthen this section of the Code. The wording proposed is an improvement of the current content. We have made comments below to further strengthen the proposed wording.

Respect and Courtesy

3.1 CEC welcomes the expansion of this provision but should read *I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings, when I am representing the Council and when I am online and/or using social media.*

The context set out in the explanatory note is helpful and should be included in supporting guidance.

3.2 This provision may benefit from being simplified to: I will advance equality of opportunity; not discriminate unlawfully and will seek to foster good relations between different people.

3.3 We would suggest this provision is framed positively. For example, I will consider the impact on others whilst engaging in political debate.

We would also suggest a minor amendment: *I will not engage in any conduct that could reasonably amount to bullying or harassment (including sexual harassment). I accept that such conduct is completely unacceptable and will be considered to be a breach of this Code.*

3.4 This paragraph is a fundamental addition to strengthen this section. However, we feel it requires to be re-drafted. Specifically, the second sentence should be reworded to plain English and be included as a separate paragraph.

3.5 The word *utilise* could be replaced with *use* to simplify language further.

3.7 CEC is supportive of the principle that the performance, conduct or capability of individual officers or groups of officers should not be criticised in public however, as part of their scrutiny role, we recognise the importance of councillors scrutinising and raising concerns around service performance. Concerns around how a department, service or team is performing can be legitimately raised within a public setting (Council or committee) without raising issues of conduct and capability.

Gifts & Hospitality

We suggest a full re-draft of this section. The current wording (and layout) is confusing and contradicts sections of the explanatory note. For example:

3.19 I will refuse any hospitality offered other than that which would normally be associated with my duties as a councillor. Explanatory note: 'Councillors will no longer be allowed to accept gifts and hospitality that members of the public would otherwise have to pay.....'

Specific comments:

3.12 should also contain the further detail set out in 3.13

There is repetition in 3.13 and 3.14

3.17 Guidance should include a description and examples of minor items

3.18 'Hand it over' should be replaced with a more appropriate term

3.20 the reference should be to the Proper Officer and not the Monitoring Officer (The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003)

The section now does not contain reference to spouse or cohabitee. We suggest this is reinstated.

There is also a question on what the benefits are of not including a gifts and hospitality register in the revised Code. This seems to provide little benefit to the councillor, Council or the public at the risk of undermining confidence in a public body or individual. CEC believes the current practice of recording gifts and hospitality should remain.

Producing reports to Council on this matter creates additional bureaucracy and additional time pressures on meetings.

Confidentiality

CEC is supportive of the further clarity provided concerning the obligation to keep certain information confidential and the clarity that the provisions apply to all to all confidential information, not just information deemed to be confidential by statute.

CEC also welcomes the clarity for councillors' that the onus is on the councillor to check whether they have consent to disclose such information and that they cannot assume it can be disclosed if they are unable to obtain such consent.

Dealings with and Responsibilities to the Council

3.24/3.25 CEC recognises the legal restrictions placed on councillors under The Local Government Act, 1986 in relation to the use of Council resources (and reflection of this within the Code). The legislation does not take into account the way society now uses technology e.g. the use of a mobile phone for business and personal use and the challenges this places on Councillors.

3.29 This provision should read two months or more for clarity.

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

Yes No

Please provide your comment:

CEC is supportive of the draft wording of Section 4 with the exclusion of 4.20. The current wording is not clear, if £25,000 is the total cumulative shareholding or only related to the declared interest. The current wording or draft wording for the model Code provides more clarity.

Category Six: Interest in Shares and Securities

4.21 You have a registrable interest where you have an interest in shares comprised in the share capital of a company or other body and the nominal value of the shares is: (i) greater than 1% of the issued share capital of the company or other body; or (ii) greater than £25,000.

Draft Model Code, 2020

4.19 I have a registerable interest where I:

(a) own or have an interest in more than 1% of the issued share capital of the company or other body; or

(b) where the nominal value of any shares and securities I own or have an interest in is greater than £25,000.

Again, the reference in 4.19 should be to the Proper Officer and not the Monitoring Officer. (The Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003)

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

Yes No

Please provide your comment:

CEC does not support the amendments set out in Section 5. The proposed amendments potentially allow for errors to be made, or the provisions to be misused with negative practical and perception consequences.

Specifically, CEC believes councillors should still declare an interest when being a member of a body to which they have been appointed or nominated by the Council as a Councillor representative.

Currently, a councillor is permitted to take part and vote (in all but quasi-judicial matters) as long as they also declared the interest and only for organisations that had been set up for the purposes of providing a Council service and where the Council had a contract with the organisation. This, for example, covers all of the City of Edinburgh's Council ALEOs and seems an appropriate and proportionate rule.

Under the new proposed wording councillors would not be required to declare any interest and could take part in consideration of the item for any organisation that the Council had appointed them to. CEC has a large number of councillors who sit on outside bodies for a variety of reasons, sometimes historic and sometimes required by the relevant organisation's articles of association. This means that there will be instances where conflicts of interest could be perceived to exist and there being no requirement to declare an interest could undermine public confidence in the Council's decision making and of the integrity of individual councillors and the Council. For example, under the revised Code councillors could take part in a decision to provide grant funding to an organisation that they are a director of without declaring any interest whatsoever. This could significantly undermine the grant process and undermine confidence in the impartiality of the Council. Although grant funding is noted within the explanatory note, the content of current proposals and any guidance would be unlikely negate the perception and practical consequences.

It is unclear what the benefits are of taking such a liberalised approach for either the Council, councillors or the public and officers suggest this is amended. Specifically, removing the need for declarations to be made at the point of decision (and placing reliance on the public to access the register of interest) creates obstacles to transparent decision making. CEC believe that the current system, whereby declarations are made but a councillor can still vote, is a far clearer process which ensures transparency at the point of decision and should be retained.

If the Connection – Interest – Participation approach is pursued, the Code should clarify that a connection must include the councillor's consideration of their being a *reasonable perception* of a connection.

Supporting guidance should also make clear the meaning of 'leaving the room' in an online meeting e.g. disconnecting from the meeting or simply turning camera and sound off.

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

Yes No

Please provide your comment:

CEC welcomes the changes in this section. This section provides Councillors with additional clarity and examples of different types of lobbying that may take place.

6.5 (d) should be added - *meet with the individual or organisation and not publicly support their position but will thereafter declare an interest and take no part in the decision-making on the matter.*

6.6 requires to be amended to clarify that the paragraph relates to quasi-judicial matters.

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

Yes No

Please provide your comment:

CEC is supportive of the changes made within this section to more generic approach that can cover all types of applications and decisions.

7.3 is helpful to set out the types of decisions involved in quasi-judicial or regulatory matters. A further explanation of quasi-judicial would assist the public to understand the decisions this section relates to. The section would benefit from moving 7.3 to the start of section 7.

7.4 and 7.5 are particularly welcome as it has reduced a lengthier narrative into simplified wording to promote better understanding and adherence to the provisions of the Code.

7.8 We would suggest the following redraft to strengthen the provision

I Will Not:

a) do anything or be motivated to do anything that is connected or linked in any way with my personal involvement in ~~a policy or strategic~~ any matter;

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:

Section 3 - General Conduct, Gifts and Hospitality

This section should receive a full re-draft. The current wording (and layout) is confusing and contradicts sections of the explanatory note. Fundamentally, there is a concern that the current wording may restrict councillors in carrying out their role.

CEC believes the current practice of recording gifts and hospitality should remain.

Section 5 – Declarations of Interest

CEC does not support the amendments set out in Section 5. The proposed amendments potentially allow for errors to be made, or the provisions to be misused with negative practical consequences.

Specifically, CEC believes councillors should still declare an interest when being a member of a body to which they have been appointed or nominated by the Council as a councillor representative.

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

European Convention on Human Rights, Article 10

Has full consideration been given to how the Code aligns with the European Convention on Human Rights, specifically Article 10 (freedom of expression)?

There are a number of typographical errors within the current draft.