

ANNEX 1

Draft SBC Response to Consultation on New Proposed Code of Conduct

Q1. Do you agree there is a need to revise the Code of Conduct?

A Yes

The Code of Conduct has remained largely unaltered for many years and needs to be updated to reflect changes that have occurred. Social Media plays a much greater part of the life of a Councillor now than it did in 2010. It is felt further guidance is needed on that. It is also considered that the Code needs revision as regards Bullying and Harassment. It is also felt that much of the Code is complex and a rewrite should provide greater clarity.

It is, however, considered that there is little evidence to suggest that the areas of Gifts and Hospitality have created difficulty or controversy for the office of Councillor and it is not readily apparent that the changes proposed in that section are either necessary or helpful.

Q2. Do you have any comments on the changes proposed for Section 1: Introduction to the Code of Conduct?

A

It is considered that the provisions of the Councillors Code of Conduct are more onerous than those standards required of MPs and MSPs and this disparity is questioned. The provisions regarding respect, for example, apply to a much narrower group of people in the MSP's Code. Importantly, in that regard, the MSPs Code makes it very clear that an MSPs private an family life is not covered by the Code. By contrast, the wording in this draft Code for Councillors created the possibility of its terms impacting on that private life of Councillors.

It is considered that the provision at 1.5 of the Code is problematic. It provides that:

“I will comply with the provisions of this Code in all situations where I am acting as a councillor, have referred to myself as a councillor or could reasonably be perceived as acting as a councillor.”

In small communities, most people will be aware who their local Councillors are. The public will often consider that anything their local Councillor does is done while they are “acting as a Councillor”. This wording therefore has a very real prospect of affecting a Councillor even while they are acting in a purely private capacity. This is considered to be too intrusive and the wording should be changed to ensure that it is clear that a Councillor is not bound by the provisions of the Code while acting in their private capacity.

Q3. Do you have any comments on the changes proposed for Section 2: Key Principles of the Code of Conduct?

A Yes

It should be more clearly stated that breach of the Key Principles will not, of itself, amount to a breach of the Code of Conduct and that a complaint alleging only a breach of one of these principles will not be accepted for investigation.

In addition, SBC would suggest that a further sentence be added to the end of the paragraph headed Leadership. It should read:

“This may at times might mean questioning the council’s decisions and/ or decision making process.”

Q4. Do you have any comments on the changes proposed for Section 3: General Conduct?

A Yes

(1) It is noted that the part of Section 3 pulls together a variety of elements of the older Code under the one broad heading of Respect and Courtesy. SBC regrets that the variety of topic headings which are used in the current Code have disappeared. It is felt they make it easier to find particular elements and add emphasis.

(2) 3.1 provides:

“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 using social media”

Whilst SBC welcomes the clarification that the requirement to treat people with courtesy and respect extends to everyone, the loss of particular reference to members of the public is regretted. Perhaps a combined approach could be

“I will treat my Colleagues, Council employees, members of the public and everyone I have contact with as a Councillor with respect. This includes etc...”

(3) It is regretted that the Code has not taken the opportunity to provide further guidance on the use of Social Media and we would ask for this gap to be addressed.

(4) SBC has a number of comments to make in respect of the areas of bullying and harassment. It welcomes the expansion of the Code in this area as it considers that the Code should do all it can to seek to eradicate such behaviour. It welcomes the fact that the Code now details that the Code can be breached by a single incident or by a course of conduct.

(5) SBC would welcome this area being further modified. In general, it would welcome the introduction of a separate definition for each of the following terms:

- i. Disrespect (the definition should note this could be unconscious or unintentional)
- ii. Bullying (the definition should make reference to the integral role of power in this type of behaviour)
- iii. Harassment
- iv. Sexual Harassment

SBC considers it is important to clarify that each of these behaviours is different from the others – and not just a continuum of the same behaviour.

- b. It is aware that an individual can tolerate behaviour over a period, but that at some point a further instance of that continuing behaviour will reach a breaking point for its victim. It is considered that it should be made clear that this also amounts to bullying or harassment.

- c. It is understood that identification of bullying and harassment is largely based on a subjective test – that it will be identified based on the impact upon the victim irrespective of the intention of the person whose behaviour is complained of. However, this does leave a significant gap. Where an individual is particularly robust they may be able to personally experience behaviours, which would cause many other people distress, but they themselves may not experience that impact. A complaint of bullying or harassment would therefore fail to be established. This is problematic because the behaviour itself may have been played out in a public forum – be that a meeting or social media. In turn, this can not only bring the office of Councillor into disrepute, but can act as a deterrent to others becoming involved in local democracy; that is, when such behaviour is left unchallenged and deemed therefore to be acceptable, others will not become involved as they would not want to be subjected to this type of behaviour. It is therefore considered that, in addition to the subjective test for identifying such unacceptable behaviour, an objective element should be built in. Paragraph 3.3 in the draft Code states that:

“I will not engage in any conduct that could 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.”

This wording appears to be capable of incorporating an objective test. However perhaps it would avoid any doubt on the issue if this was amended to read:

“I will not engage in any conduct that either amounts to, or could reasonably be considered to 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.”

- d. It is considered that the Code should create an obligation on those who witness harassment or bullying to report that behaviour and an obligation on those who are on the receiving end of the behaviour to consider reporting the conduct.
- e. It is considered that paragraph 3.5 could be further strengthened by adding the words “and I will attend training on these subjects offered by the Council or third parties” after the words that it is “my responsibility to understand what constitutes bullying and harassment”

Gifts and Hospitality

Gifts and Hospitality

Scottish Borders Council considers that the current rules regarding hospitality work very well and do not require to be changed. It further considers that while it can see some merit in clarifying the rules regarding gifts, it considers the changes proposed in the draft code add confusion rather than clarity.

The wording at 3.19 is too strict. Scottish Borders Council does not agree that any offer of hospitality to local Councillors should be refused. To do so would be to weaken the important link between local Councillors and their own local community. Those occasions where hospitality is offered to Councillors arise, in the main, because of that key link between the Councillor and their Communities. The events are likely to be to events of significance to that local community and the attendance of local Councillors is considered to be important. It is

not considered that this gives rise to any perception of a Councillor seeking to obtain benefit from their role. In fact, in many circumstances, it is seen to be quite the opposite and attendance at these events is considered to be akin to a duty of the Councillor.

There does of course require to be safeguards in the system, but it is considered that those safeguards could be stated simply as:

“I will never ask for hospitality nor will I accept hospitality from a person seeking to do business with the Council or seeking a decision from it.

I will not allow the offer of, nor the provision of, hospitality influence me in the performance of my duties as a Councillor.”

Gifts

The wording on the draft Code at 3.13 is complex and indeed perhaps contradicts the wording at 3.17. It is considered that a simpler approach would be to adopt broadly the approach taken in 3.17 but with that modified to retain the monetary value as in the current Code. It would therefore read:

“I will refuse any gift offered unless it is:

- a) a minor item or token of modest intrinsic value (not exceeding £50) offered on an infrequent basis; or
- b) a civic gift being offered to the Council”

It is assumed that the monetary cap could be modified over time without need to resort to the full parliamentary process.

SBC also considers that the safeguards recognised as being necessary for hospitality are necessary in respect of gifts.

3.20 SBC considers that Councillors should continue to maintain their own registers of Gifts and hospitality (both accepted and refused) and that the Monitoring Officer should have access to each Member’s registers.

Q5. Do you have any comments on the changes proposed for Section 4: Registration of Interests?

A Yes

4.23 SBC considers that Members should continue to maintain a record of hospitality and their own record of offers of gifts that they have refused. It is understood that it may be necessary for the Monitoring Officer to be able to view all of these Registers (to identify if there is any pattern of offers cross the Council), however, it is felt that it is useful for Members to keep their own record so they can readily identify when previous offers have been made.

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

A Yes

This 3 stage approach is considered to be clear and helpful. 5.3 f (advising that appointment by the Council as a representative to an outside body is not a connection) is welcomed.

It is suggested that it could be further clarified by slightly modifying 5.4 to read:

“5.4 I understand that a connection will become an interest when the objective test is met – that is where a member of the public with knowledge of the relevant facts would reasonably regard my connection to a particular matter as being so significant that it would be considered as being likely to prejudice the discussion or decision-making. I will declare any such interest at the earliest stage possible in meeting.”

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

A Yes

This section is more difficult to understand than some other parts of the revised Code. In particular, 6.2 provides:

“6.2 In deciding whether to respond to such lobbying, I will always have regard to the objective test, which is whether a member of the public, with knowledge of the relevant facts, would reasonably regard my conduct as being likely to prejudice my, or the Council’s, decision-making role”

It is assumed that this applies only to those categories of lobbying identified at 6.1 c, but it is not clear as the term “lobbying” is also used generically at 6.1. This should be clarified.

Similarly, Paragraph 6.6 should be clarified to make it clear when this obligation does arise - as it does not apply to all decisions which Council will take.

The inclusion of the statement “I am not obliged by the Code to respond to every contact” at 6.3 is welcomed

Q8. Do you agree to the changes proposed for Section 7: Taking Decisions on Quasi-Judicial or Regulatory Applications?

A Mostly

This section of the Draft Code is generally improved and easier to read and understand. The adoption of a more generic set of rules is welcomed.

However it is considered that the text in paragraph 7.8 under “I will not” is problematic. It reads:

- “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 matter;
- b) express any view that suggests I have a closed mind on the policy or strategic issue”

In paragraph (a) the wording is too widely drafted. It would prevent a Councillor from expressing a view on such strategic matter where they have had a community involvement in a particular issue. Councillors – **in shaping the strategy of the Council** – should remain free to bring to that views they have gathered in community involvement both before and since becoming a Member.

It is considered this restriction should only apply where a Councillor has a financial interest in the policy or strategic matter which will form the framework for future decisions.

Similarly, it is not clear why paragraph b is considered necessary in the context of this part of the Code and it is considered that it should be removed.

Q9. Overall, how clear do you find the proposed revised Code?

A Very clear
Mostly clear x
Sometimes unclear
Very unclear

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

A No