

Minutes

Constitution Committee
Monday, 29 June 2020



SOUTH
KESTEVEN
DISTRICT
COUNCIL

Committee members present

Councillor Mike Exton (Vice-Chairman)
Councillor Paul Fellows
Councillor Breda Griffin
Councillor Anna Kelly

Councillor Mark Whittington
Councillor Linda Wootten (Chairman)
Councillor Ray Wootten

Officers

Director of Law and Governance (Shahin Ismail)
Interim Director of Finance (Richard Wyles)
Head of Governance (Jo Toomey)
Democratic Officer (Lucy Bonshor)

19. Register of attendance, membership and apologies for absence

All Members of the Committee were present apart from Councillor Bellamy who was substituted by Councillor Ray Wootten.

20. Disclosure of interests

None disclosed.

21. Minutes of the meeting held on 16 December 2019

The minutes of the meeting held on 16 December 2019 were agreed.

Officers were thanked for the work that had been undertaken to date in respect of the Constitution Review.

22. Constitution Review 2020

The Chairman of the Constitution Committee presented her report. At the meeting of the Committee on 16 December 2019 a Working Group was formed to review the Constitution; it was composed of all Members of the Committee. Since its formation, the Working Group had met four times and had discussed the following topics:

- The role of Members

- Engagement by the public
- Member training
- The Committee's own remit
- Rules of procedure
- Clarity around definitions such as Key Decisions

Work was also on going by the Head of Governance to review and refresh the Scheme of Delegation which would be reported to a future meeting of the Committee.

The Covid-19 pandemic had meant that the review had been suspended to support urgent decision-making and the establishment of remote Committee meetings. A revised project plan was shown at Appendix 1 to the report.

Appendix 2 to the report gave a revised structure to the Constitution which was split into 10 parts.

- Part 1 contained a Summary.
- Part 2 contained the Articles.
- Part 3 dealt with the Responsibility for Functions.
- Part 4 concerned Procedure Rules.
- Part 5 covered Codes and Protocols.
- Part 6 covered Financial Regulations.
- Part 7 covered the Contract Procedure Rules.
- Part 8 dealt with the Petition Scheme.
- Part 9 covered the Members Allowance Scheme.
- Part 10 covered Templates.

Appendix 3 detailed the changes that had been made to the Summary section of the Constitution. Appendix 4 detailed the changes to Article 1, The Constitution, Appendix 5 covered Article 2, Members of the Council, Appendix 6 covered Article 3, Members of the Public and the Council, Appendix 7 dealt with Decision Making and Appendix 8 contained a table showing the significant amounts other authorities used when making Key Decisions.

Each appendix showed track changes where changes had been made or where wording had been moved to another more relevant section of the Constitution.

One Member expressed concern that the Constitution would primarily be available electronically and that hard copies were available on request for a fee. She also referred to mandatory training for certain Committees. She had attended licensing training but had not been allowed to substitute on the Committee. This was being looked at as part of the review and would be embedded within the Constitution.

Another Member referred to where political balance had been crossed out and it was stressed that this had been a section header only. The requirements relating to political proportionality of committees were set out in legislation. The Committee requested the addition of some text to the Summary and Explanation referring to the requirements for politically balanced committees.

More discussion followed in relation to the appointment of outside bodies and the functions of the Overview and Scrutiny Committees that had been written within the summary section of the Constitution. One Member felt that this did not fully reflect the role of an Overview and Scrutiny Committee. It was stated that information contained within some areas had been moved to more appropriate parts of the Constitution.

The Director of Law and Governance stressed that no powers were being taken out or added that would alter the content of the Constitution. If any major changes were required these would be highlighted to the Committee. The Committee would need to agree any such changes and recommend them to Council. The changes before the Committee were being made to improve clarity and to address any duplication or contradictions within the current Constitution.

The Chairman echoed these comments and felt that perhaps the Member was being disingenuous as nothing was being removed from the Constitution, rather it was being streamlined. Further reassurance was given that nothing was being taken out. It was acknowledged that the track changes within the document made them look complicated. Members were advised that formatting and numbering would be reviewed once changes had been made.

A request was made to have a clean copy before Full Council to enable a sense check to be carried out and to see that nothing had inadvertently been missed out.

➤ **Action Note**

That a clean copy of the document be circulated to the Committee before going to Full Council.

Discussion on Appendix 5 followed. Some Members felt that a rider should be included at 2.3 (viii) about exceptional circumstances which prevented Members attending Council and which had been approved by Council. A comment was also made about elections and when they were held, referencing the current Covid-19 crisis. Members were advised that the content of the Constitution reflected legislative requirements. Changes to the dates of elections were governed by Government legislation and only changes to law would allow election dates to change.

Appendix 6 covered Article 3, Members of the Public and the Council. A discussion on Mayoral referendums followed with questions asked on how that would affect a district council with parish and town councils and how a unitary authority or devolution would affect a district council. The Director of Law and Governance indicated that she would look at the issue for Members and report back.

➤ **Action Note**

The Director of Law and Governance to look at Mayoral Referendums and how that impacted a District Council.

A Member asked that the wording at 3.2 be clarified that “members of the public must not be violent, abusive or threatening, whether in person or writing to Councillors or officers....”.

➤ **Action Note**

3.2 Responsibly of Members of the Public to include wording;

“members of the public must not be violent, abusive or threatening, whether in person or writing to Councillors or officers....”.

Appendix 7 dealt with a revision to Article 4, the content of which was contained within Article 17. The content of this Article would be separated to make it simpler to find information. A basic framework would be included at the top of the Article and information on Key Decisions. The section on the Forward Plan would be moved to a more logical place within the Constitution.

Key Decisions

Members were reminded that the Working Group had previously looked at the definition for Key Decisions. Legislation stated that a Key Decision meant an executive decision which resulted *“in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority’s budget for the service or function to which the decision relates; or to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority”.*

Currently the Council did not put a figure on what was significant, officers used their judgement. The Interim Director of Finance was guided by the Official Journal of the European Union thresholds for goods and services contained within the Council’s Contract and Procurement Procedure Rules and the Financial Regulations. This threshold was €200,000 which was roughly £189,330; it was noted that this amount fluctuated in line with the exchange rate. It was therefore suggested that a Key Decision should have a value of £200,000 and above for both revenue and capital expenditure or savings.

Members discussed £200,000 as a significant figure. A comment was made in relation to severance pay but the Director of Law and Governance stated that this did not fall under this expenditure. Further comments were made about how decisions below £200,000 would be made, this would be by either a Non- Key Decision or an Officer Delegated Decision. One Member felt that the different size of budgets held, could make the figure of £200,000 too low or too high. It was stated that Officers were mindful of the Official Journal of the European Union threshold figure of €200,000 and therefore the proposed £200,000 was in line with current capital expenditure. Whatever figure was decided on would be kept under review.

The Interim Director of Finance stated that the figure had been discussed with officers. The report appendix detailed benchmarking with other authorities and it was

noted that the values they used related to the size of the authority and their level of spend.

The Council's gross turnover was in the region of £77million and a balance needed to be struck that allowed Members to be aware of significant expenditure, but not to the extent that it fettered or delayed the day to-day business of the Council. On balance, the Interim Director of Finance felt that £200,000, was the right level to ensure that both sides were satisfied.

If decision-making was being planned effectively, it was not considered a threshold of £200,000 would cause delay.

The Contract and Procurement Procedure Rules and the Financial Regulations, which formed parts of the Constitution, had been adopted at Council in January 2020. Thresholds had been aligned where possible within the documents so that there was no confusion or conflict for Officers. The Interim Director for Finance was satisfied that the proposed threshold of £200,000, was fit for purpose at the current time.

One Member expressed concern that the proposed figure of £200,000 was out of line with the figures used by other authorities. Appendix 8 indicated that the definition of significant for other councils within the same audit family as South Kesteven ranged from £20,000 to £100,000.

The Interim Director of Finance reassured the Member that some Councils did have lower thresholds, but stated that Members should be mindful that comparisons may not be, like-for-like. For example, the Council had a Housing Revenue Account (HRA), which meant that it had wider business interests and was larger than some of the authorities listed. The Interim Director of Finance was aware that some of the authorities listed were also currently undertaking their own reviews.

It was proposed, seconded and **AGREED:**

Recommendation to Council:

That the Constitution Committee recommends the word significant in relation to Key Decisions as shown within the Constitution be replaced with a figure of £200,000, this figure to be kept under review.

23. Local Government Association consultation on draft Members' Code of Conduct 2020

The Head of Governance presented the Leader's report on the Local Government Association consultation on draft Members' Code of Conduct 2020. In January 2019 the Committee on Standards in Public Life published its report into Local Government Ethical Standards. The first recommendation raised within the report was that the Local Government Association (LGA) should create an updated model Code of Conduct in consultation with representative bodies of councillors and officers of all tiers of local government.

A draft of the Local Government Association's model Code of Conduct was appended to the report for Members to discuss. The consultation period ran until 17 August 2020 and was, structured around an online questionnaire, the questions for which was also appended to the report. The feedback from the consultation would help develop the final document which would be reviewed by the Local Government Association's Advisory Board before being presented to the Local Government Association General Assembly in Autumn 2020.

As the Constitution Committee had already informally discussed some areas contained within the document, it was felt that the Committee was a good starting point to draft a response on behalf of the Council. The response would then be open to other Members to make comment.

The Committee agreed to go through the questionnaire and comment on the themes contained in the document adding any narrative that they wished.

The Chairman referred to the gifts and hospitality section and the gifts she had received during her time as the Mayor of Grantham, which she had declared. Currently the Council's Constitution stated that gifts with a value of £50 should be disclosed; the limit proposed in the LGA draft model code was £25. The Head of Governance indicated that the LGA had done a comprehensive piece of work on gifts and hospitality. The proposed figure was based on feedback received during the consultation, including feedback from public and private organisations.

One Member felt that joining with national bodies was a good idea and that democratic views were made across the board. She felt that Parish and Town Councils should be encouraged to adopt the code. It was stated that although it was not anticipated that adopting the updated model Code would be mandatory, there was an expectation that a District Council's Code of Conduct would be mirrored by the Parish and Town Council's and neighbouring authorities in their area.

One Member asked for clarity around the definitions of gifts and hospitality. He felt that greater clarity was required regarding attending functions and corporate hospitality.

The Director of Law and Governance said that the draft Code did seek to clarify gifts and hospitality and referred Members to the appropriate areas within the appendix. Gifts received due to their role as a Member should be declared. If Members felt that the draft Code did not give enough detail in relation to gifts and hospitality, then this could be included in their feedback, particularly in relation to other areas where there was a potential to receive gifts, such as representing the Council on an outside body.

Members attention was drawn to the Appendix to the draft Code around disclosable pecuniary interests and other registerable interests.

The draft Code was still based on the seven Nolan principles but included other themed areas with statements on civility, bullying and harassment, impartiality of officers of the Council, confidentiality and access to information, bringing the Council into disrepute, the use by Members of their position as a Councillor, use of Council resources and facilities, interests and gifts and hospitality.

Members then went through the questionnaire and made comments.

In relation to the first question and the behaviour expected of Councillors, Members felt that there was no reason not to expect Members to answer the question with “To a great extent” and could not see any reason to disagree with the proposed code.

A brief discussion on when Members were “on duty” followed and the Director of Law and Governance referred Members to the relevant part of the proposed Code. Members also discussed filling the form in individually, although it was acknowledged that this could cause problems when combining responses.

(12:10pm Councillor Griffin left the meeting)

Members felt that the social media aspect of the draft Code needed to be more detailed and relevant. Members also felt that the bullying and harassment element of the Code should capture those who looked on, or tolerated someone being bullied. They felt that wording “not to encourage, incite or conspire with others” should be included at statement 3. It was agreed that the statements listed at question 4 should all be answered, “To a great extent”.

Responses to the rest of the questions were as shown below (a copy of the questionnaire is appended for context):

6.	Each specific obligation followed by its relevant guidance.
7.	To a great extent.
8.	To a great extent.
8a.	Members felt that ‘dishonest and deceitful’ was too narrow and suggested ‘improper conduct’.
9.	To a great extent.
9a.	The Committee felt that additional wording was needed, to add in capturing allowing others to participate in bullying or harassment. Suggested wording was ‘encouraging, inciting or conspiring with others’
10.	No.
10a.	Members felt there should be a separate code (annexe to the main).
10b.	<p>There was a feeling that there needed to be more on the code of conduct, with more guidance, especially with virtual committees, abuse thereof, abuse of chat functions and recordings of virtual committees. The preference of Members was to integrate social media within the code, potentially as a separate annexe. They felt that there should be detailed guidance about physical posts, re-tweeting things, liking topics that other people had posted.</p> <p>Members felt that if someone was using social media, and it was not in their role as a Councillor, they should make a declaration that they were not acting in their role as a member of the Council.</p> <p>There was agreement that the same standards should apply in relation to social media as everyday life.</p>

11.	To a great extent – people’s perception from outside.
12.	Main body of the Code.
12a.	To ensure that there was no misunderstanding.
13.	To a great extent* exception Trade Unions.
13a.	* Some concern was expressed about whether it was appropriate to include trade unions or whether this delved too far into people’s private lives. It was noted that there was no requirement to register membership of a professional body.
14.	To a great extent**
14a.	**There was a suggestion that greater clarity could be provided in respect of this. Members identified a potential scenario where a gift was given to a member of the Councillor’s family in order to influence the Councillor.
15.	Yes
16.	See below
16.	Members felt that each was equally important and should be incorporated. There was a view that to rank the list could be seen to diminish their importance when the difference in the level of importance ascribed to each was considered to be minimal.
17.	Comments captured within response to each section.

The Chairman asked that once the detail had been captured within the questionnaire it should be circulated by e-mail to Members.

➤ **Action Note**

That a copy of the completed questionnaire be circulated to all Members for comment.

24. Close of meeting

The meeting closed at 12:57pm.

Draft Model Code of Conduct

CONSULTATION QUESTIONS

Your name

If you would like to receive a copy of your completed response please provide your email address below:

E-mail address

Are you...

- A councillor.
- An officer.
- Answering on behalf of a whole council (please specify).
- Other (please specify).

Please indicate your council type

- Community/Neighbourhood/Parish/Town.
- District/Borough.
- County.
- Metropolitan/Unitary/London Borough.
- Other (please specify).

Under the Localism Act 2012, the Code of Conduct applies to councillors only when they are acting in their capacity as a member. The LGA believes that because councillors are elected by the public and widely recognised by the public, it makes sense for them to continue to model these behaviours when they are making public comment, are identifying as a councillor and when it would be reasonable for the public to identify them as acting or speaking as a councillor. The Committee on Standards in Public Life supported this approach in their report into Local Government Ethical Standards. Whilst the LGA is waiting for Government's response to these recommendations the option has been added in square brackets as it would need changes in legislation.

Q1. To what extent do you support the proposal that councillors demonstrate the behaviours set out in the Code when they are publicly acting as, identifying as, and/or giving the impression that they are acting as a councillor, including when representing their council on official business and when using social media?

- To a great extent.
- To a moderate extent.
- To a small extent.
- Not at all.
- Don't know/prefer not to say.

Q1a. If you would like to elaborate on your answer, please do so here:

Q2. Is it sufficiently clear which parts of the Model Code are legal requirements, which are obligations, and which are guidance?

- Yes.
- No.
- Don't know.

Q3. Do you prefer the use of the personal tense, as used in the Code, or would you prefer the passive tense?

- Personal tense ("I will").
- Passive tense ("Councillors should").
- No preference.

Specific obligations

The Code lists 12 specific obligations – these set out a minimum standard councillors are asked to adhere to.

Each obligation or group of obligations is put into a wider context to explain why that particular obligation is important.

Q4. To what extent do you support the 12 specific obligations?

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know / prefer not to say
1. Treating other councillors and members of the public with civility.					
2. Treating council employees and representatives of partner organisations and those volunteering for the council with civility and respecting the role that they play.					
3. Not bullying or harassing any person.					
4. Not compromising, or attempting to compromise, the impartiality of anyone who works for, or on behalf of, the council.					
5. Not disclosing information given to me in confidence or disclosing information acquired by me which I believe is of a confidential nature, unless I have received the consent of a person authorised to give it or I am required by law to do so.					
6. Not preventing anyone getting information that they are entitled to by law.					
7. Not bringing my role or council into disrepute.					
8. Not using, or attempting to use, my position improperly to the advantage or disadvantage of myself or anyone else.					
9. Not misusing council resources.					
10. Registering and declaring my interests.					
11. Not accepting significant					

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know / prefer not to say
gifts or hospitality from persons seeking to acquire, develop or do business with the council or from persons who may apply to the council for any permission, licence or other significant advantage.					
12. Registering with the monitoring officer any gift or hospitality with an estimated value of at least £25 within 28 days of its receipt.					

Q5. If you would like to propose additional or alternative obligations, or would like to provide more comment on a specific obligation, please do so here:

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Q6. Would you prefer to see the obligations as a long list followed by the guidance, or as it is set out in the current draft, with the guidance after each obligation?

- As a list.
- Each specific obligation followed by its relevant guidance.
- No preference.

Q7. To what extent to you think the concept of 'acting with civility' is sufficiently clear?

- To a great extent.
- To a moderate extent.
- To a small extent.
- Not at all.
- Don't know/prefer not to say.

Q7a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

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Q8. To what extent do you think the concept of 'bringing the council into disrepute' is sufficiently clear?

- To a great extent.
- To a moderate extent.
- To a small extent.
- Not at all.
- Don't know/prefer not to say.

Q8a. If you would like to suggest an alternative phrase that captures the same meaning, or would like to provide a comment on this concept, please do so here:

Q9. To what extent do you support the definition of bullying and harassment used in the code in a local government context?

- To a great extent.
- To a moderate extent.
- To a small extent.
- Not at all.
- Don't know/prefer not to say.

Q9a. If there are other definitions you would like to recommend, please provide them here.

Q10. Is there sufficient reference to the use of social media?

- Yes.
- No.
- Don't know/prefer not to say.

Q10a. Should social media be covered in a separate code or integrated into the overall code of conduct?

- **Separate code.**
- **Integrated into the code.**
- **Don't know/prefer not to say.**

Q10b. If you would like to make any comments or suggestions in relation to how the use of social media is covered in the code, please do so here:

Registration and declarations of interests

The law at present requires, as a minimum, registration and declaration of 'Disclosable Pecuniary Interests' - that is matters which directly relate to the councillor and their partner if applicable.

The LGA is proposing that all councillors are required to declare interests where matters also relate to or affect other family members or associates. The LGA has broadened the requirement to declare interests beyond this current statutory minimum in line with a recommendation from the Committee on Standards in Public Life. These specific provisions are set out in **Appendix B** of the Code.

Q11. To what extent do you support the code going beyond the current requirement to declare interests of the councillor and their partner?

- To a great extent.
- To a moderate extent.
- To a small extent.
- Not at all.
- Don't know/prefer not to say.

Q11a. If you would like to elaborate on your answer, please do so here:

Q12. Should the requirement to declare interests be in the main body of the code or in the appendix where the draft model code currently references it?

- In the main body of the code.
- In the appendix.
- Other (please specify).
- Don't know/prefer not to say.

Q12a. If you would like to make any comments or suggestions in relation to how the requirement to declare interests is covered in the code, please do so here:

It is also suggested that more outside interests should be registered than is the current statutory minimum. These are set out in **Table 2 of the Appendix** and are designed to demonstrate to the community transparency about other bodies with which the councillor is engaged.

Q13. To what extent do you support the inclusion of these additional categories for registration?

	To a great extent	To a moderate extent	To a small extent	Not at all	Don't know / prefer not to say
Any organisation, association, society or party of which you are a member or in a position of general control or management and to which you are appointed or nominated by the council.					
Any organisation, association, society or party that exercises functions of a public nature of which you are a member or in a position of general control or management.					
Any organisation, association, society or party directed to charitable purposes.					
Any organisation, association, society or party whose principal purposes include the influence of public opinion or policy (including any political party or trade union).					

Q13a. If you would like to propose additional or alternative categories for registration, please provide them there:

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Q14. To what extent do you support the proposed requirement that councillors do not accept significant gifts as set out in Obligation 11?

- To a great extent.
- To a moderate extent.
- To a small extent.
- Not at all.
- Don't know/prefer not to say.

Q14a. If you would like to elaborate on your answer please do so here:

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Q15. The draft code proposes £25 as the threshold for registering gifts and hospitality. Is this an appropriate threshold?

- Yes.
- Yes, but the amount should be reviewed annually with the code's review.
- No, it should be lower (specify amount).
- No, it should be higher (specify amount).
- Don't know/prefer not to say.

Q16. The LGA will be producing accompanying guidance to the code. Which of the following types of guidance would you find most useful? Please rank 1-5, with 1 being the most useful.

- Regularly updated examples of case law.
- Explanatory guidance on the code.
- Case studies and examples of good practice.
- Supplementary guidance that focuses on specific areas e.g. social media.
- Improvement support materials, such as training and e-learning packages.

Q16a. If you would like to suggest any other accompanying guidance, please do so here:

Q17. If you would like to make any further comments about the code, please do so here: