

Subject: New Model Code of Conduct
for Members

Status: For Publication

Report to: Joint Audit Overview & Scrutiny
Committee and Standards
Committee

Date: 14th June 2007

Report of: Head of Planning, Legal & Democratic Services

Portfolio

Holder: Well Managed Council

Key Decision: NO

Forward Plan General Exception Special Urgency "X" In
Relevant Box

1. PURPOSE OF REPORT

1.1 To inform Members of the new Model Code of Conduct for Members (attached).

2. CORPORATE PRIORITIES

2.1 The matters discussed in this report directly impact on the Council's ability to delivery quality services to its customers and to provide high quality community leadership.

3. RISK ASSESSMENT IMPLICATIONS

3.1 All the issues raised and the recommendation(s) in this report involve risk considerations as set out below:

Loss of confidence in Members, the Council and its decision making processes, and local democracy.

4. BACKGROUND AND OPTIONS

4.1 The Order for the new Members Code of Conduct was made by the Government on 2nd April 2007 and laid before Parliament on 4th April 2007. The Order came into force on 3rd May 2007. Section 51 of the Local Government Act 2000 requires the Council to adopt a Code of Conduct incorporating the mandatory provisions of the Code within six months of the Order being made, i.e. by 1st October 2007.

4.2 Revised Model Code of Conduct

Contents of the Revised Code

The Revised Code is written in a new style of “you”, reflected below, rather than in the third person. Its main provisions are as follows:

1. Scope

The duty to comply with the Code arises whenever you:

- Conduct the business of your authority (including the business of the office to which you are elected or appointed); or
- Act, claim to act or give the impression you are acting as a representative of your authority (paragraph 2 (1)).

(Note: The Revised Code will apply only to conduct in the performance of a member’s functions as a member. It will not apply to conduct in a member’s private life. There is one exception to this which requires legislation to implement. The Local Government and Public Involvement in Health Bill proposes to apply the Code to any criminal offence for which a Member is convicted (including an offence committed before the date the Member took office but for which he or she is committed after that date); the Bill is anticipated to become law in October 2007).

2. General Obligations

a) Treating with respect, bullying and intimidation

You must treat others with respect (paragraph 3(1)). You must not:

- Do anything which may cause your authority to breach any of the equality enactments
- Bully any person
- Intimidate or attempt to intimidate any person who is or is likely to be a complainant, a witness, or involved in the administration of any investigation or proceedings in relation to an alleged breach of the code, or
- Do anything which comprises the impartiality of those who work for, or on behalf of, your authority (paragraph 3 (2)).

b) Disclosure of confidential information

You must not disclose confidential information except where: you have the consent of a person authorised to give it; you are required by law to do so; the disclosure is made to a third party for the purpose of obtaining professional advice; or the disclosure is reasonable and in the public interest and made in good faith and in compliance with the reasonable requirements of the authority (paragraph 4).

c) Disrepute

You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute (paragraph 5).

d) Improper use of position

You must not use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage (paragraph 6(a)).

e) Use of resources

You must, when using or authorising the use by others of the resources of your authority: act in accordance with your authority's reasonable requirements; ensure that resources are not used improperly for political purposes; and must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986 (paragraph 6).

f) Making decisions

When reaching decisions on any matter you must have regard to any relevant advice provided to you by your authority's chief finance officer or monitoring officer and you must give reasons for all decisions as required (paragraph 7).

3. Behaviour outside official duties

All the duties set out above have effect in relation to conduct in the official capacity of the member. In addition, the following duties also have effect at any other time, where that conduct constitutes a criminal offence for which the member has been convicted (paragraph 2(3)):

- Duty not to intimidate or attempt to intimidate (paragraph 3(2))
- Duty not to bring the office or authority into disrepute (paragraph 5)
- Duty not to use improperly the position as a member to confer or secure an advantage or disadvantage (paragraph 6(a)).

(but please see Note in relation to the Scope of the Code – 4.2.1 above).

4. Personal and prejudicial interests

a) Personal interests

The old Code provided that a member must regard himself or herself as having a personal interest in a matter if a decision on it affects, to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend (paragraph 8). The revised code has amended this definition by:

- Extending the definition to include a wider term covering any person with whom the member has a "close association" (paragraph 8(2)(a));

- Reducing the number of registrable interests by replacing the reference to the inhabitants of an authority's area with "the majority of the inhabitants of the ward affected by the matter" (paragraph 7(1)(b)(i)).

Categories of personal interest include:

- Any body to which the member has been appointed as a representative of his/her authority to act as a member or occupy a position of general control or management (paragraph 8(1)(a)(i));
- Any body: exercising functions of a public nature; directed to charitable purposes; or one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which the member is a member or in a position of general control or management (paragraph 8(1)(a)(ii)). This is a new category introduced in the revised code.

Personal interests arising in relation to these two categories are treated differently from other personal interests. They need only be disclosed when the member addresses a meeting of the Council on that business (paragraph 9(2)). They do not need to be disclosed at the start of the meeting as is required for other categories of personal interests.

Sensitive information need not be made public in the register of interests if to do so would threaten the safety of the member and/or his/her family (paragraph 14 (1)).

b) Prejudicial Interests

The test in the old Code is retained: Where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest (Revised Code, paragraph 10 (1)).

The situations in which a prejudicial interest will not arise have been clarified. Three new circumstances have been added to the existing list. A member will not have a prejudicial interest where the matter does not affect the financial position of the member or the body of which they are a member or where the matter relates to the grant of any licence, registration, permission or consent. Nor will a prejudicial interest arise where the matter relates to the authority's functions in respect of the setting of council tax or precepts; any ceremonial honour or the granting of an allowance, payment or indemnity (paragraph 10 (2)).

A member with a prejudicial interest may attend a meeting to make representations, answer questions or give evidence, provided the public are also allowed to attend the meeting for the same purpose. The member must withdraw from the room as soon as the representations have been made.

A member will be able to attend a hearing of a Standards Committee into his or her conduct in order to be able to defend himself or herself and in other circumstances to make representations.

In relation to overview and scrutiny members are debarred from involvement in the scrutiny function in cases where they are scrutinising decisions they were involved in making.

Other changes

Other changes are summarised below:

- For the creation of a personal interest in relation to a relevant person or body the nominal value of the interest in that relevant person or body has been raised from £5,000 to £25,000.
- In relation to personal interests arising as a result of the interests of any person from whom gifts or hospitality has been received to the estimated value of at least £25, the need for disclosure at meetings of such interests is now only required if the interest was registered within three years of the date of the meeting (and not five years as initially proposed).
- A new category for the permitted disclosure of confidential information has been recognised in relation to disclosure to a third party for the purpose of obtaining professional advice.

4.3 The Standards Board have indicated that their four politically nominated Board Members are seeking each Council's continuing assistance in putting responsibility for upholding high ethical standards firmly where it belongs – at the heart of every local authority's own culture. The recent White Paper stated that the UK has a strong reputation of high standards in public life, and it is important for the future well-being of local government that this is maintained. It is firmly believed that the maintenance of high standards is essential to an effective local democracy.

4.4 They therefore warmly welcome the recent Parliamentary confirmation of the revised Code of Conduct. As requested, following the consultation in 2005, this now gives councillors much greater scope to speak up for local residents and local issues. It is clearer and removes unnecessary restrictions whilst continuing to ensure that there is a firm set of principles underpinning public trust in their local representatives.

4.5 Some Councils have already adopted the new Code. The Standards Board urges its early adoption, to achieve the benefits for, and ensure consistent treatment of, councillors nationally.

4.6 The new Code is a key step in the switch to a bottom-up approach to the handling of alleged breaches of the Code. Assuming the Local Government and Public Involvement in Health Bill completes its final Parliament stages, from April 2008 the Council's own Standards Committee will receive, filter and, where necessary, investigate most allegations of misconduct. Only where this is not possible, as in the most serious cases, will investigations be referred to the Board. This continues the trend already established, with over half of investigated cases being dealt with locally, and will allow the Standards Board to increase its efforts in promoting high standards generally supporting those few councils who face difficulties.

- 4.7 The Standards Committee, and its Chair, will be the linch pin to the success of local handling, and to public confidence in it. Recent research shows that many Standards Committees have now established mature and constructive relationships in which elected and independent members, of the right calibre and capacity are genuinely working together to achieve the common goal of achieving a robust local ethical framework. It also shows that the overt support and commitment of Leaders is critical to their success. The Standards Board is therefore seeking support in making this the norm in all authorities.
- 4.8 While research shows that monitoring officers are generally positive about their changing role, members are also asked to ensure that they are properly supported and resourced in carrying out their new responsibilities. They will need the Council's support in giving the robust and independent advice essential to the confidence of both members and the public in dealing locally with standards issues.
- 4.9 The Standards Board will be working with the Department for Communities and Local Government and all sectors of local government to develop appropriate guidance and training materials to support local authorities in their new responsibilities.
- 4.10 It is believed that by making a success of these changing arrangements, councils can reinforce their generally high standing as leaders in standards of conduct, setting an example to the many other bodies with whom they work in partnership. The Standards Board are more than happy to share its considerable bank of good practice with any Council interested in improving its performance in this area. Meanwhile, in its own more strategic regulatory role, the Standards Board will provide, in as light touch a way as possible, the independent monitoring and oversight needed for the public to have confidence that high standards are being maintained nationally.
- 4.11 The Standards Board Guidance makes two recommendations on the adoption of the Code:
- 1) The Code should be adopted in its model form without amendment. This will give certainty to members and the public as to what standards are expected, ensure consistency throughout England and minimise the legal risk of a Council adopting additional provisions which are unforeseeable;
 - 2) There should be a Preamble to the adopted Code which outlines the ten General Principles governing the conduct of Members of local authorities (attached). The inclusion of the Principles will put the Code into context. However, the Principles are explanatory only and the Standards Board cannot accept allegations based upon a breach of them.
- 4.12 All Members are encouraged to attend the training on the new Model Code of Conduct for Members, on Tuesday 19th June 2007.
- 4.13 No other option is recommended.

5. COMMENTS OF THE HEAD OF FINANCIAL SERVICES

5.1 There are no financial implications

6. COMMENTS OF THE HEAD OF PLANNING, LEGAL AND DEMOCRATIC SERVICES

6.1 It is extremely important that the provisions of the Model Code are not changed in any way; this will ensure consistency nationally.

7. COMMENTS OF THE HEAD OF HUMAN RESOURCES

7.1 There are no Human Resources implications.

8. CONCLUSION

8.1 Members are requested to consider the new Model Code of Conduct.

9. RECOMMENDATION(S)

9.1 The Council be recommended to adopt the new Model Code of Conduct for Members with immediate effect.

10. CONSULTATION CARRIED OUT

10.1 None.

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Background Papers	
Document	Place of Inspection
All background papers are attached to the report	