

## STANDARDS COMMITTEE – 18<sup>TH</sup> JULY 2007

### COUNCILLORS' CODE OF CONDUCT – ADOPTION OF NEW CODE

Report of the: Monitoring Officer

Status: For Decision

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**Executive Summary:** A new Model Code of Conduct for Local Authority Members (the Code) came into force on 3<sup>rd</sup> May 2007. The Code sets out the standards of conduct expected of Members and Co-opted Members of local authorities and various other public bodies. Council is now required to adopt the Code incorporating the mandatory provisions.

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**This report supports the Key Aim of** effective management of Council resources.

**Portfolio Holder** Cllr. Loney

**Head of Service** Head of Legal and Committee Services – Mrs. Christine Nuttall

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**Recommendation:** It be RESOLVED that:

The Standards Committee is requested to recommend to Council the adoption of the Code as set out in the Appendix to this report

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#### Background

- 1 Council will have until the 1<sup>st</sup> October 2007 to adopt the Code. After this time, Members of authorities that have not adopted it will be automatically covered by it.
- 2 The Standards Board for England (the Board) are recommending that the Code is adopted in its model form, without amendment. The Board say that this will give certainty to Members and the public as to what standards are expected. It will ensure consistency throughout local authorities, avoiding confusion for Members on more than one authority and for the public. It will also minimise the legal risk of an authority adopting additional provisions which are unenforceable.

#### Introduction

- 3 On accepting office, all Members are required to declare to undertake to observe the Council's Code of Conduct. The existing Code of Conduct has been in place for six years and the Code has resulted from a long period of consultation.
- 4 The Code is not a radical reform of the existing Code but should bring clarity and relaxation to a number of the existing rules.

### **Scope of the Code**

- 5 The Code applies whenever a Member acts in an official capacity. This includes not only conducting the business of the Council or the office to which the Member has been appointed, but also occasions when the Member acts as a representative of the Council or purports to do so. The Code also regulates certain behaviour outside official duties. Conduct which constitutes a criminal offence leading to conviction is brought within the scope of the Code, whether the Member is acting in an official capacity or not.

### **The Ten General Principles of Public Life**

- 6 The Board recommends that local authorities include a preamble to the Code that it adopts, which outlines the ten general principles governing the conduct of Members of local authorities. This preamble to the Code is set out in italics as are any additional provisions recommended for adoption.

### **General Obligations**

- 7 The new Code provides that a Member must:
- treat others with respect;
  - not do anything to cause the Council to breach equality enactments;
  - not bully any person;
  - not intimidate any complainant, witness or other person involved in a complaint against the Member;
  - not do anything which compromises the impartiality of those who work for or on behalf of the Council;
  - not disclose confidential information except in certain circumstances;
  - not bring their office or the Council into disrepute;
  - not improperly use their position to gain an advantage or disadvantage for themselves or any other person;
  - use the Council's resources in accordance with the Council's reasonable requirements and not for political purposes;
  - have regard to the Publicity Code;
  - have regard to the advice of the Statutory Officers; and
  - give reasons for decisions in accordance with statutory and local requirements.

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- 8 The prohibition on bullying is new and intended to send out a clear message that such behaviour is unacceptable. Bullying is not defined, but will be the subject of the Board's guidance.
- 9 The ban on disclosing confidential information has been relaxed to allow disclosure of confidential information where the disclosure is reasonable and in the public interest, made in good faith, and does not breach the reasonable requirements of the authority.
- 10 The unlawful discrimination provision has been replaced by a duty not to do anything that may cause the authority to breach its statutory duties under equality laws.
- 11 The Code already provided that a Member must not use their position improperly to confer or secure for themselves or for anyone else an advantage or disadvantage. The words 'or attempts to use' their position is now added to make it clear that the provision is breached whether or not the attempt is successful.
- 12 Members should not use local authority resources for political purposes. When using the authority's resources, a Member must have regard to the Code of Recommended Practice on Local Authority Publicity.
- 13 The obligation on Members to report other Members' breaches of the Code was perceived by some as encouraging Councillors to make trivial allegations, and this obligation has been removed. To protect persons who do report serious misconduct, a new provision prohibits a Member from intimidating or attempting to intimidate a complainant or witness or other people involved in the investigation.

**Personal Interests**

- 14 A personal interest is one affecting the Member's well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of Council Tax payers or inhabitants of the ward affected by the decision. The Code had previously provided that Members had personal interests if they would be affected by a matter to a greater extent than other Council Tax payers or inhabitants of the authority's whole area.
- 15 A personal interest also captures decisions which affect the well-being or financial position of relevant persons. A relevant person is a family member, and also a person with whom the Member has a close association. The purpose here is to ensure that the definition embraces a range of individuals who may be personal, business or professional associates.
- 16 Gifts or hospitality worth £25 or over must now be included in the member's register of interests. This means that a personal interest must be declared at any meeting where a matter relating to this interest is discussed.
- 17 You may now be exempt from having to include sensitive information on your register of interests. If your personal interest in a matter under discussion at a

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meeting is sensitive information, you will need to declare that you have a personal interest but you will not have to give any details about the nature of that interest.

**Declaring Interests**

- 18 The basic rule on disclosure remains the same. A personal interest in the business of the Council should be disclosed to any meeting where the Member is present and where that business is considered. The Member should disclose the existence and nature of the interest at the commencement of the consideration or as soon as the interest becomes apparent.
- 19 A new relaxation occurs when an interest arises because of the Member's involvement with a body as a Council appointee or as a member of a body exercising functions of a public nature for example another local authority. The interest need now only be declared at a meeting if the Member proposes to speak on a related issue. The purpose is to avoid the tedium of mass declarations of interests where Members have no intention of taking part in the debate.
- 20 A further relaxation applies in that the Code now provides that a Member's obligation to disclose a personal interest to a meeting only applies when you are aware of or ought to be aware of the existence of the personal interest.

**Prejudicial Interests**

- 21 The basis test remains the same: a prejudicial 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 the member's judgement of the public interest.
- 22 However, there was a general consensus that the prejudicial test proved too restrictive and so the Code provides that a personal interest will also be a prejudicial interest if all of the following conditions are met:
  - The matter does not fall within one of the exempt categories of decisions.
  - The matter affects your financial interests or relates to a licensing or regulatory matter.
  - A member of the public, who knows the relevant facts, would reasonably think your personal interest is so significant that it is likely to prejudice your judgement of the public interest.
- 23 The exempt categories of decisions states that a Member will not have a prejudicial interest if the matter relates to any of the following functions of their authority:
  - Housing: if you hold a tenancy or lease with the authority, as long as the matter does not relate to your particular tenancy or lease.

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- School meals or school transport and travelling expenses: if you are a parent or guardian of a child in full-time education or you are a parent governor, unless it relates particularly to the school your child attends.
- Statutory sick pay; if you are receiving this, or are entitled to this.
- An allowance, payment or indemnity for Members.
- Setting council tax or precept.

- 24 It should be noted that the Code does not oust the requirements of the general law and the common law rule precluding bias in decision making will still apply. It is proposed that the note relating to bias and pre-determination set out in italics in the Code be adopted.

**What to do when you have a Prejudicial Interest**

- 25 Even where you have a prejudicial interest, the Code supports the Member's role as a community advocate and enables you in certain circumstances to represent your community and to speak on issues important to them and to you. The Code gives members with a prejudicial interest in a matter the same rights as Members of the public to speak to a meeting on the matter. However, once the Member has done so, the Member must immediately leave the meeting room, as currently required, and cannot remain in the public gallery to observe the vote on the matter.
- 26 Prejudicial interests arising in relation to overview and scrutiny are clarified. A Member will have a prejudicial interest in overview and scrutiny business if the matter relates to an Executive or other committee decision, where the Member was a member of that body at the time and present when the decision was made. The Member will still be permitted to attend the Scrutiny Committee for the purpose of making representations etc. before withdrawing and leaving the meeting.

**Key Implications**

Financial

- 27 There will be a need to train Members on the detailed requirements of the Code. Training costs have been reduced by the formation of a partnership approach amongst a number of Councils throughout Kent which this Council has contributed to within existing budgets.
- 28 Once the Code is adopted it is envisaged that weekly training workshops will be undertaken again within existing budgets.

Legal, Human Rights etc.

- 29 Adoption of the Code is necessary to comply with the provisions of the Local Authorities (Model Code of Conduct) Order 2007 and Section 51 of the Local Government Act 2000.

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Resource (non-financial)

- 30 Officer time will be spent on providing weekly training workshops.

Value For Money

- 31 Providing training on the Code for Members including Parish and Town Council Members within a partnership framework has resulted in significant savings amongst the Kent Authorities.
- 32 Providing on going training by the use of internal staff will also result in savings.

**Conclusions**

- 33 The Code should provide clarity and address some of the previous concerns raised by Members. There will be greater flexibility for Members to participate in discussions as an interest arising in the public sphere will not be treated as prejudicial as an interest is not prejudicial if it does not affect the financial position of the Member or a relevant connected person or body.

**Sources of Information:**

Statutory Instrument 2007 No. 1159 The Local Authorities (Model Code of Conduct) Order 2007

The Local Government Act 2000

The Code of Conduct Guide for members May 2007

The Bulletin 33 produced by the Board

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**RISK ASSESSMENT STATEMENT**

By virtue of Section 51 of the Local Government Act 2000 the Council has a duty to adopt the Code by the 1st October 2007. Not to adopt the Code by the due date would mean that the Council is failing to comply with its statutory duty although after this date Members of authorities that have not adopted will be automatically covered by it. Not to formally adopt by the required date could cause confusion amongst Members and the public which may result in allegations and breaches of the Code taking place.

