

Report of: Director of Corporate Resources

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	30 April 2007		

Delete as appropriate	Exempt	Non-exempt
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If exempt under para.10.4, category (1-7) of the Access to Information Rules in Part 4 of the Constitution rules, give reasons. Because: (Please delete if not required)

Subject: REVISED CODE OF CONDUCT FOR MEMBERS

1. Synopsis

This report sets out the revised Code of Conduct for Members that was published by the government on the 4th April and will come into effect on the 3rd May 2007. This is following the consultation exercise in which the Authority participated last year.

2. Recommendations

- 2.1 That the Council adopt the revised Code of Conduct set out in Appendix A with immediate effect together adopting the ten general principles as a non-enforceable preamble to the code to remind members and the public of the principles underlying the code.
- 2.2 That all Members and co-opted members sign an undertaking to comply with the Code of Conduct.
- 2.3 The Head of Democratic Services organises training on the implications of the new Code for members shortly after its adoption by the Council.

3. Background

- 3.1 The new revised Code of Conduct for local councillors was published by the Government on the 4th April 2007 and will come into effect on 3rd May 2007.
- 3.2 The revised code follows a consultation paper published by the Department of Communities and Local Government on 22nd January 2007. As a result of the 900 responses received to the consultation significant changes have been made to the initial proposals. The main changes from the current code are set out below. One of cosmetic changes is to refer to members as “you” rather than in the third person.
- 3.3 The revised code is part of the Government's wider vision for a more devolved conduct regime, including more locally based decision-making with most misconduct allegations being investigated and dealt with at a local level. It has been published as The Local Authorities (Model Code of Conduct) Order 2007 (Statutory Instrument 2007 No. 1159). The revised code replaces the four separate codes issued in 2001 in respect of Parish Councils, National Park and Broads Authorities, Police Authorities and local authorities.
- 3.4 The revised code will come into effect on 3rd May 2007. It will apply to all authorities in England following each authority's adoption of the new code. In the case of those authorities that do not adopt the code, the Local Government Act 2000 provides that the provisions of the revised code will automatically apply to those authorities. However, the above codes issued in 2001 will continue to have effect in relation to the investigation or adjudication of misconduct where the allegation relates to conduct which took place before the revised code becomes effective

4. Main Differences from the Current Code

4.1 Scope

The duty to comply with the Code arises whenever a member conducts the business of the authority, or acts, **claims to act or gives the impression** that they are acting as a representative of your authority (paragraph 2 (1)). The words in bold are new and would cover the situation where a member allows another to believe they are acting on authority business when in fact this is not the case.

The application of the new Code is limited to situations where a member is on authority business, except in relation to the duty not to intimidate any a complainant or witness in connection with an allegation that a member has breached the Code (paragraph 3(c)), the duty not to bring the office into disrepute (paragraph 5) and the duty not to improperly confer or secure an advantage or disadvantage on another (paragraph 69a) where it applies to the member's private life. However in those cases the behaviour will only amount to a breach if it results in a criminal conviction.

4.2 Treating others with respect, bullying and intimidation

- There is a new requirement not do anything which may cause the authority to breach any of the equality enactments; this replaces the requirement not to commit an act of unlawful discrimination following the decision of the Case Tribunal in the Islington case that the Tribunal did not have the power to make such a finding;
- It will be breach of the Code for a member to bully any person. A one off incident would be enough to amount to bullying for these purposes;
- It will be a breach of the Code for a member to 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

4.3 Disclosure of confidential information (paragraph 4)

The provisions relating to the disclosure of confidential information have been widened to allow such disclosure where it is required by law, 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. This follows the decision in the **Dimoldenberg** case where it was held that Article 10 of the European Convention on Human Rights implied a public interest defence into the Code.

4.4 Use of resources (paragraph 6(b))

The wording of the requirement not to use resources of the authority for political purposes is slightly changed so that the express permission to do so when such use could reasonably be regarded as likely to facilitate or be conducive to the discharge of the functions of the authority or of the office held by the member has been removed. However, the word “improperly” has been inserted and it may be that use will not be improper if those conditions apply. It has also been made an express requirement for members to have to the Local Authority Code of Publicity made under the Local Government Act 1986 when using the authority’s resources.

5. Personal and prejudicial interests

5.1 Personal interests (paragraph 8)

The old code provided that a member must regard themselves 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. The revised code has amended this definition by:

- Replacing the definition of “friend” with “any person with whom [the member] has a “close association” (paragraph 8(2)(a)).

- Removing the definition of “family” so that this will now include a much wider range of familial ties although it should be noted that paragraph 9(4) only requires interests to be declared where a member was aware of or ought reasonably to be aware of its existence so the more remote the family link the less likely it will be that a duty to declare the interest arises.
- 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 8(1)(b)(i)).
- Where the interest affects or relates to a body to which the member has been appointed as a representative of his/her authority, or a body exercising functions of a public nature (whether the member is an authority appointee or not), the duty to declare it will only arise as when and if the member speaks on that item. It would appear that casting a vote does not of itself trigger such a duty.
- Where a matter relates to a person or body who has made a gift to the member worth more than £25 *in the previous* three years, this will have to be declared as a personal interest.
- The level at which a personal interest will arise in relation to a body in which an member holds beneficial interests in securities has been increased from £5,000 to £25,000

5.2 Prejudicial interests (Paragraph 10)

The test in the old code is retained, namely that a personal interest will also be a prejudicial interest 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)).

Under the old code, there were a number of “discretionary exemptions” upon which a member could choose to rely. The discretionary element has been removed so that the new Code simply provides that in the prescribed situations a prejudicial interest will not arise at all. In addition, a number of new exceptions 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 (their close personal associate or family member) or the body of which they are a member; or

if matter does not relate to the grant of any licence, registration, permission or consent to such persons; or

in the setting of the council tax or precepts; or

in the granting of any any ceremonial honour; or

in the the granting of an allowance, payment or indemnity

The decision in the Richardson case which prevented a member from remaining in the room even as a member of the public has been reversed so that 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.

6. The register of interests

If the member is of the view that the inclusion of information in the publicly available register is likely to create a serious risk that a member or a person who lives with them may be subjected to violence or intimidation and the monitoring officer agrees, it may not be included on the register but should still be submitted to the monitoring officer.

7. Ten Principles of Public Life

The Standards Board for England recommends that authorities consider adopting the ten principles of standards in public life which should have effect as an enforceable preamble to the Code. This would seem a sensible idea as it would reinforce the Authority's commitment to those principles. A copy of the principles is attached at Appendix B.

8. Implementation

The code comes into effect from the 3rd May 2007 and Councils will then have six months in which to adopt it. Consideration should be given to the Council meeting at which adoption should take place. One reason for delaying adoption might be to reflect the fact that the Local Government and Health Bill will make some further changes to the ethical framework (including the increased localisation of hearings into complaints and amendments to the Local Government Act 2000 to reverse the Livingstone decision to make it clear that the code can indeed apply to private conduct).

Once the Code has been adopted, it will be necessary to roll out training to all members and key officer to ensure that it is understood. It is suggested that the training include a review of the Local Authority Code of Practice on Publicity and general equalities responsibilities bearing in mind the new explicit duties in relation to these areas.

9. Implications

9.1 Legal Implications

These are contained in the body of the report.

9.2 Financial Implications

None.

9.3 Equalities and Diversity

The revised code sets out various proposals with regard to equalities matters to make the code more inclusive and the wording of the code gender neutral. It arguably requires members to act more proactively in relation to the equalities strands covered from time to time by legislation.

Final Report Clearance

Signed by
Director of Corporate Resources Date

Received by
Head of Democratic Services Date

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