
STANDARDS COMMITTEE

8 June 2007

Report of the Head of Civic, Democratic and Legal Services

THE REVISED MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS 2007

Summary

1. This report recommends that the Standards Committee recommends to Council adoption of the new Model Code of Conduct for Local Authority Members 2007.

Background

2. The Government tabled in Parliament the Revised Model Code of Conduct for Members on 2 April 2007. The Code is included in the Local Authorities (Model Code of Conduct) Order 2007 No. 1159.
3. The Code comes into force from 3 May 2007. However, under Section 51 of the Local Government Act 2000, the Council has six months from the date the Regulations were made not the date of them coming into force to formally adopt the Code. The “made” date on the Statutory Instrument is 2 April 2007. This means that if the new Code is not adopted by 1 October 2007 it will automatically apply. However, the expectation is that each Council will consider the new Code and formally resolve to adopt it.
4. Article 8 of the Council’s Constitution states that one of the roles of the Standards Committee is to assist in the observation of the Members’ Code of Conduct. In addition, the Scheme of Delegation to Council Committees and Other Bodies contained in the Constitution (Part 3, Schedule 2) states that one of the functions of the Standards Committee is to advise the Council on the adoption or revision of a Code of Conduct. Therefore it is for the Standards Committee to consider the new Model Code of Conduct and recommend its adoption to Council. A copy of the Statutory Instrument and the Model Code of Conduct is attached to this report at Annex 1.
5. The main changes to the Code are as follows:
 - Application of the Code

The new Code takes into account the outcome of the Livingstone Case where the High Court held that because the Members undertaking to observe the Code of Conduct extended only to conduct “in performing his functions” (as a Member), the Code of Conduct could not apply to conduct in a Member’s private life except where the Member misused his/her position as a Councillor in his/her private life for personal advantage. Paragraph 2(2) of the Revised Code of Conduct therefore provides that the Code of Conduct shall not have effect except in relation to conduct by a Member in, or purportedly in, his/her official capacity.

However, despite this judgement, paragraph 2(3) provides that particular paragraphs of the Code of Conduct, such as the requirement not to bring your office or authority into disrepute, shall also have effect in relation to conduct “at any other time” where that conduct constitutes a criminal offence for which the Member has been convicted. In addition, paragraph 2 (4) extends this to apply to a criminal offence which occurs before the Member was elected, co-opted or appointed as a Member, where the conviction for that offence occurs after the Member has been so elected, co-opted or appointed.

- Equality Provisions

These have been redrafted to specify a prohibition against causing the Authority to be in breach of any of the equalities enactments.

In addition there is a specific prohibition against bullying.

- Confidentiality

These provisions have been amended to permit disclosure of confidential information by a member where it is reasonable, in the public interest, made in good faith and in compliance with the reasonable requirements of the Authority. The Revised Code of Conduct does not provide a definition of what will be considered as in the public interest, but it is expected that the Standards Board for England will suggest that the test currently used under the Freedom of Information Act would be appropriate.

- Interests

These provisions have been changed in particular provision relating to personal interests affecting “a relative or friend” have been changed to “a member for your family or a person with whom you have a close association”. At present there is no definition of “family” or of what constitutes “a close association”.

In addition, previously a Member did not have a personal interest where a decision on the matter would not affect him/her to a greater extent than other Council Tax payers in the whole of the Authority’s area, in the revised Code it is not a personal interest where it would not affect the Member to a greater extent than the majority of the Council Tax payers in his/her Ward or electoral division.

With regard to prejudicial interests, there is now a substantial limitation on the definition of a prejudicial interest. In the revised Code the definition states that a personal interest will not amount to a prejudicial interest unless

- Either it affects the financial position of the person or body
- Or it relates to the termination of any approval, consent, licence, permission or registration in relation to the person or body.

This means that, unless the matter comes within the defined list of approvals, consents etc., a matter cannot give rise to a prejudicial interest however much it affects the general wellbeing of the person or body and however likely it is to affect the way that Member may speak or vote on the matter, unless it actually affects the financial position of that person or body.

In addition, the Code also now makes a distinction between making representations to a meeting and being involved in the discussion and decision making. Now, a Member with a prejudicial interest is to be treated in a similar way to a member of the public, so that where procedure rules grant members of the public a right to speak at a meeting, the Member with a prejudicial interest may appear as a member of the public to present a case and answer questions but must then withdraw from any consideration and determination of the matter. This means that the Member still does not have quite the same rights as a member of the public in that he/she must withdraw after making representations.

- Registration of Members' Interests – Sensitive Information

The new Code includes an additional category of "Sensitive Information" which is information which, if available for public inspection, is likely to put the Member or someone who lives with the Member at serious risk of violence or intimidation. It is for a Member to advise the Monitoring Officer of the information which he/she considers to be sensitive and then only if the Monitoring Officer agrees that it is sensitive the Member can omit the sensitive information from his/her formal notification to the Monitoring Officer.

Transitional Arrangements

6. Members do not have to give a new undertaking to observe the revised Code of Conduct as the Declaration of Acceptance of Office incorporates a provision to observe the Authority's Code of Conduct as adopted. However, the Statutory Instrument does not include any transitional provisions which would have carried forward existing Registrations of Members' Interests. Unfortunately this means that every Member who completed a Registration of Interests Form before adoption of the new Code will be required to complete a new Form within 28 days of the day on which the Authority adopts the revised Code of Conduct.
7. Members should note that any existing allegations of misconduct and any further allegations of misconduct prior to adoption of the revised Code of

Conduct will continue to be judged in accordance with the old Code of Conduct.

Consultation

8. A copy of the proposed amendments was circulated to Parish Councils and to the political groups. Comments from the Groups and Parish Councils were incorporated in the Standards Committee consideration of the amendments at their meeting on 9 March 2007 and a detailed response to the consultation sent to the Department for Communities and Local Government within the prescribed deadline.

Options

9. Members can either agree to recommend to full Council adoption of the Code set out in paragraph 15 below or

Members can agree not to recommend adoption as set out in paragraph 15 below. However, Members should note that if the Council does not formally resolve to adopt the Model Code of Conduct it will apply from 2 October 2007 in any event.

Analysis

10. The Council's Monitoring Officer recommends adoption of the Model Code of Conduct as set out in paragraph 15 below as it is important that the Council is proactive in ensuring its ethical governance arrangements are up-to-date and in line with statutory requirements.

Corporate Priorities

11. Consideration and adoption of the new Model Code of Conduct improves the Council's corporate governance arrangements and contributes to the corporate priority of improving leadership at all levels to provide clear, consistent direction to the organisation.

Implications

12. There are no specific Financial, HR, Equalities, Crime and Disorder, Information Technology, Property or Other implications of adoption of the new Model Code of Conduct. However, the Legal implications are as set out in paragraph 10.

Risk Management

13. Adoption of an up-to-date Code of Conduct and monitoring of its compliance will assist in reducing any risk of a successful complaint against Members in respect of their conduct within their role.

14. Recommendations

- That the Council adopt the revised Code of Conduct with effect from 1 August 2007.
- That all Members are notified of the need to renew their Registration of Interests within 28 days of adoption.
- That a copy of the revised Code of Conduct be provided to every Member of Council.

Reason: To ensure that the Council operates an up-to-date Code of Conduct in compliance with Statutory Regulations.

Contact Details

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Report Approved

Date 24 May 2007

Specialist Implications Officer(s)

None

Wards Affected:

All

For further information please contact the author of the report

Background Papers:

None

Annexes

Annex 1 - Local Authorities (Model Code of Conduct) Order 2007 SI 2007 No. 1159