

**TO: STANDARDS COMMITTEE**  
**DATE: 28<sup>TH</sup> FEBRUARY 2007**  
**SUBJECT: CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS**  
**BY: DIRECTOR OF CORPORATE SERVICES, GOVERNANCE AND SCRUTINY**  
**Classification: Unrestricted –**

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**Summary:**

The Government has recently published the attached consultation paper which seeks views on a draft of a proposed new model code of conduct for local authority members.

The Local Government White Paper, *Strong and Prosperous Communities*, published in October 2006 announced the Government's intention to put in place a clearer, simpler and more proportionate code of conduct for members of local authorities, which would include changes to the rules on personal and prejudicial interests.

This follows on from the discussion paper *Standards of Conduct in English Local Government: The Future* published in December 2005, which included the Government's response to the recommendations of the Standards Board for England for amendments to the model code of conduct for members.

The Government is also proposing to combine the current four individual codes into one consolidated code. The four model codes are the Local Authorities (Model Code of Conduct)(England) Order 2001, the Parish Councils (Model Code of Conduct) Order 2001, the National Park and Broads Authorities (Model Code of Conduct)(England) Order 2001 and the Police Authorities (Model Code of Conduct) Order 2001.

The consultation paper provides an explanatory commentary on the proposals and invites views on them. A draft of the proposed new model code is at Annex A to the paper and particular questions on which views are welcomed are listed separately at Annex B to the paper.

Annex B of the main document sets out the eight specific questions raised and I would welcome any comments on this. From my perspective I would make the following observations:

- Pg 7 - Unlawful Discrimination - technical legal adjustment whilst maintaining original essence of treating others with respect
- Pg 7 - Bullying - this provision has been trailed for along time
- Pg 8 - Public interest disclosure of confidential information (**Q1**)- the case referred to is Westminster and relates to the 'Lady Porter' issues and shows the need to balance the public interest against merely seeking to make political capital through disclosure of properly confidential information.
- Pg 9 - Behaviour outside official duties (**Q2**) -this has been one of the more confused areas of the Code and has been publicised nationally through the recent decision relating to the Mayor of London - amendments have been included in the Local Government Bill to include behaviour in a private capacity within the remit of a code of conduct
- Pg 11 - Publicity code - Code of local authority publicity (**Q3**) - see separate document - do you feel that this is unnecessary and restrictive?
- Pg 11 - Reporting breaches of code and proscribing information - requirement to report other members has always been a difficult area

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so I suspect deletion of this will be welcomed - comments on the proposed addition relating to intimidation of complainants and witnesses.

- Pg 12 - Gifts and Hospitality (Q4)- proposal is to make information about gifts and hospitality over £25 publicly available as a personal interest in the interests of transparency - comments welcome, ultimately it is about balance and proportionality.
- Pg 13 - Interests of friends (Q5)- this has been an area of significant difficulty and the proposal is to include a reference to close personal association - how will this be defined? will it overcome the current perceived problems with the definitions of friends and family?
- Pg 13 - definition of personal interests - narrowing definition to a more locally based focus to reduce number of personal interests
- Pg 14 - public service interests - new category - seems sensible approach
- Pg 15- prejudicial interests list of exemptions (Q6)- suggested exemptions (indemnities, setting of the council tax and consideration of freeman status) seem to make sense
- Pg 15 - overview and scrutiny committees - members only be debarred from involvement in scrutiny function in cases where they are scrutinising decisions they were involved in making
- Pg 16 - clearer prejudicial interest test (Q7)-relaxation of rules - these would seem to overcome some of the current difficulties
- Pg 17 - sensitive information - sensitive private interests not to be included on the register of interests if likely to lead to violence and intimidation
- Pg 18 - gender neutrality of language (Q8) - how to make wording more user friendly and inclusive.

The documentation has been made available to all members of Swale Borough Council and I will update the meeting on any responses received.

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**Implications:**

Human Resources Implications -none

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Finance Implications -none

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Legal Implications – dependent on the final version of the Code of Conduct published the Council's Constitution will need to be reviewed.

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Crime & Disorder Implications - none

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Sustainability Implications- none

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Risk Implications- it is important for corporate governance that a robust, proportionate and sensible Code of conduct is in place.

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**Decision Required:**

**I would recommend that members consider the consultation document and agree a response to the consultation which addresses the key points made and highlighted in the questions set out in Annex B of the main document. Suggested comments and responses are highlighted in the text of the report**

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Introduction/Background

1. The Department for Communities and Local Government has published these documents for consultation to address issues that have been raised since the original Code of Conduct was introduced. There have also been a number of high profile cases which have highlighted issues that these proposals seek to address.

## **Issues for decision**

### **Unfair Discrimination**

2. Politicians have a right to speak out about their beliefs; often as not this is the reason why they sought election in the first place. The Code does not prevent this. Indeed, recent High Court judgements make it clear that however objectionable or odious these views may be, councillors have a right to express them. However, this should not mean that unfettered freedom of speech goes unchallenged. The consultation paper makes it clear that this should not be at the expense of councils carrying out their statutory duty to promote equality. The various court judgments have demonstrated that the current wording does not address this and so the revised Code proposes a provision proscribing members from doing anything that would seriously prejudice their authority's statutory duties in regard to equality.

**3. I would recommend that members agree to this suggested provision in relation to statutory duties in regard to equalities.**

### **Bullying**

4. There have been a number of cases relating to bullying. It is proposed to add a specific provision to indicate that members must not bully any person, i.e. that bullying of other members, officers or anyone else is a breach of the code of conduct. The wish is to ensure that it is clear that bullying behaviour should play no part in members' conduct. The government has accepted the Standards Board's view that a specific definition of bullying does not need to be included in the code, and that this should be left to guidance by the Board, which will indicate, for example, the view that bullying can relate not only to patterns of behaviour, but also to individual incidents. This area has been one which has needed to be addressed and

**5. I would recommend that the introduction of a specific provision relating to bullying be welcomed. I would question whether it might be better to have a specific definition of bullying.**

### **Disclosure of Confidential Information**

6. This has been an area tested both through the decisions of the courts and the Adjudication Panel for England. The issue has been when is appropriate in the public interest to disclose confidential information. There is a clear desire and legitimate legal reasons why the Code needs to review this matter. It is suggested that a member may make a disclosure of information given to him or her in confidence or which he or she believes to be of a confidential nature in the public interest provided the disclosure is in good faith and reasonable, and that the member has not breached any reasonable requirements of the authority, e.g. in the form of relevant local protocols or procedures. It is proposed that the Standards Board would issue guidance on how they would expect members to interpret this. It is expected that such guidance would indicate that members should be able to disclose information in the following circumstances: where they reasonably believe that the disclosure will indicate evidence of a criminal offence, where the authority is failing to comply with its legal obligations, that a miscarriage of justice has occurred or may occur, that the health and safety of anyone has been endangered, or that the environment has been damaged. A response is sought to the following question:

**7. Q1. Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?**

**8. I would suggest that it is important that the final drafting make it clear that these provisions should not be used to make political capital through disclosure of properly confidential information. It is also important that it is clear that the rules on disclosure cover information received by a member in his official capacity or which relates to the work of the council.**

## **Behaviour outside official duties**

9. The Standards Board has recommended amending the code so that, in terms of a member's behaviour in private life, conduct which amounts to a criminal offence, as well as behaviour which would be regarded as criminal but for which a conviction has not been secured, could be regarded as bringing the member's office or authority into disrepute under the terms of the code.

This also reflects the decision by the High Court in the case of the appeal of the Mayor of London, in October 2006, which cast some doubt on the ability of the code of conduct to cover behaviour of members in their private capacity. The Court considered that the scope of the code was limited so that conduct in a member's private capacity can only come within the scope of the code where it is established that there is a direct link with the member's office, e.g. if the member uses his office for personal gain.

10. The Court judgement gave examples of cases where it did not think that the code was able to apply. These included where a member shoplifts or is guilty of drunken driving. Such action will not now be caught by the code if the offending conduct had nothing specifically to do with the member's position as a councillor.

11. This is a narrower interpretation than previously applied to the code. It has been assumed that it was possible to take a wider view of what private conduct could be relevant, i.e. including actions not necessarily to do with the member's position as a councillor but which may affect the member's reputation and electors' confidence in him or her.

12. The government has decided to amend sections 49 to 52 of the Local Government Act 2000 so that behaviour in a private capacity might be included within the remit of a code of conduct. This amendment is included in the Local Government and Public Involvement in Health Bill currently before Parliament. If the amendments are enacted, Ministers are currently minded to provide that only private behaviour for which the member has been convicted by a court should be forbidden by the code of conduct, and not behaviour falling short of a criminal offence. A response is sought to the following question:

**13. Q2. Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in members' private capacity to those activities which have already been found to be unlawful by the courts, appropriate?**

**14. I would suggest that it is appropriate to limit the extent of which private behaviour is considered to fall within the Code but would ask members to comment on what would be an appropriate dividing line. Some commentators feel that the Livingstone judgment recognised that a member could cease to act in an official capacity by advising any person with whom he was dealing that he or she was not acting in an official capacity. This was a valuable concession and one that perhaps should be reinforced within the Code.**

## **Commission of criminal offence before taking office**

**15. The suggested amendment to allow consideration of offences committed prior to taking office when considering whether the member has brought the authority into disrepute seems appropriate**

## **Using or seeking to use improper influence**

16. It is proposed to add 'or attempt to use' to the current code so that provision is made for the code to forbid members' attempts to use their position even where such attempts were not successful.

17. It is further proposed that Paragraph 5(b)(ii) be simplified by making it clear that an authority's resources should not be used improperly for party political purposes.

**18. Clear advice will need to be issued by the Standards Board for England.**

## **Publicity Code**

19. The revised Code is seeking to make a clearer link between members conduct and the requirements of the Publicity Code, attached as a separate document to this report. Some have suggested that the Code is too restrictive and does not serve any useful purpose. A response is sought to the following question:

**20. Q3. Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, e.g. via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?**

**21. I would suggest that it is important that a Publicity Code be in place to ensure that the point picked up above about improper use of resources for party political purposes is clear. I also feel that some central guidance would be beneficial as there is a potential for confusion over publicity form one authority to another.**

## **Reporting breaches of the code and proscribing intimidation**

22. The duty to report breaches of the code by other members has never really worked in practice, often resulting in trivial allegations and so it is no surprise that it is proposed to delete this duty. It is intended to add a provision to the code forbidding the intimidation of complainants and witnesses whether they are members, officers or members of the public. The latter is considered important to protect members who do report serious misconduct from victimisation and would demonstrate to members that victimising complainants or witnesses will rebound on them by making the case against them more serious, since such intimidation would itself count as a breach of the code. In addition, since it is the Government's policy to increase the proportion of cases to be investigated locally, it is important that officers who are required to handle such cases are free from inappropriate pressures from members.

**23. I welcome these amendments.**

## **Gifts and hospitality**

24. The current provisions provide that any gift or hospitality over the value of £25, must be notified to the monitoring officer. There is no provision for such information to be made public in the register of members' interests. It is intended to reinforce the principles of accountability and openness of the conduct regime by requiring that information about gifts and hospitality should be included in the register of interests as a personal interest. However, to ensure this provision is proportionate, it is proposed that the requirement to disclose the personal interest to a meeting would cease after five years following the receipt of the gift or hospitality, although that receipt would remain on the register as a personal interest. A response is sought to the following question:

**25. Q4. Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?**

**26. Whilst I understand the need for transparency I would welcome views on the proportionality issue.**

## **Body influencing public opinion or policy**

27. It is proposed to clarify the fact that the existing reference to a body whose purposes include the influence of public opinion or policy in which the member may have a personal interest, includes any political party.

**28. Proposed clarification is sensible and mirrors earlier guidance from the Standards Board for England**

### **Interests of family, friends and those with a close personal association**

29. This has been an area requiring some clarification for a long time. It is proposed to amend reference in the current code to friends and family by adding reference to any person with whom the member has a close personal association. The personal interest test under the current code refers to the well-being or financial position of the member, a relative or a friend. It is proposed to extend the definition to include matters affecting a range of personal, business and professional associates, as well as people who would specifically be termed as 'friends'. Reference has therefore been added to any person with whom the member has a close personal association. A response is required to the following question:

**30. Q5. Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?**

**31. I welcome the attempt to clarify the position, it is important though that this does not create as many problems of definition as it sets out to solve. There needs to be some clear direction and definition of the general application of the Code to all meetings, in particular informal meetings such as briefings and meetings with officers of the authority.**

### **Definition of personal interests**

32. This is an important area as critics of the current Code have expressed concerns that elected members have been prevented from speaking out and representing their constituents and electors. The proposed Code of Conduct is intended to give members far greater scope to present evidence and speak out before decisions are taken. It removes the current barriers to councillors speaking up for their constituents or for the public bodies on which they have been appointed to serve. The proposed amendments are designed to members to take part more frequently in council meetings. It is proposed to make the test of a personal interest as one where the interest might reasonably be regarded as affecting the member to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward which is affected by the particular matter.

**33. I would welcome anything that reduces the number of times a personal interest arises to one where the interest would be higher than most people in the local area affected by the matter.**

### **Disclosure of personal interests**

34. Under the current code, a member would technically be in breach of the code's provisions in respect of the personal interests of a relative even if he or she was unaware of any interest held by a relative. It would be sensible and more proportionate to amend the provision so that the rules on the disclosure of interests at a meeting in respect of a family member, friend or a person with a close personal association will only apply if the member is aware or ought reasonably to be aware of the interest held by that person.

**35. This is a sensible amendment but clear definition and guidance is required. It clearly extends beyond mere friendship but how far? The use of the word family without any definition could cause problems. It is essential that the new phrases, including close personal association, family, lobbying organisation, of a financial nature, philanthropic organisation and representative are clearly defined. Some commentators have questioned whether the new Code ought to deal with the issue of an "enemy" as opposed to a friend.**

### **Public service interests**

36. It is intended to create a new category of 'public service interest', which arises where a member is also a member of another public body, and for the public service interest only to be declared at meetings where the member speaks on the relevant issue. A 'public service interest', is an interest which arises where a member is also a member of another public body, to which they have been appointed or nominated by the authority, or of which they are a member in their own right. Members would be required, as now, to enter any such interest they have in the register of interests but would only declare them at such time as the member speaks on a relevant issue.

**37. This is a sensible amendment but clear and consistent definition required.**

#### **Prejudicial interests – List of exemptions**

38. The following simplifications and amendments are suggested as exemptions to prejudicial interests.

- Indemnities. This addition arises from the Standards Board's experience of cases where, for example, members have felt unable to vote in discussions on the issue by the authority of indemnities which might relate to themselves, as well as a number of other members of the council.
- The setting of council tax. Some members have been concerned that in discussing this issue, prejudicial interests may arise for them because of their connection with an organisation funded from an operational budget which is being set by the council tax settlement. It is considered that such an interest is likely to be too remote to be a prejudicial interest.
- Considering whether or not the member should become a freeman of the authority.

39. It is also proposed to allow a member to attend a hearing of a standards committee into his or her conduct in order to be able to defend himself or herself. A response is sought to the following:

**40. Q6. Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?**

**41. I welcome anything which assists members in speaking and representing themselves.**

#### **Overview and scrutiny committees**

42. The current Code does not cover the position of a member who may not now be a member of the relevant committee but was a member at the time the decision was taken. It is proposed to amend the Code to confirm that this will apply where the councillor was a member at the time of the decision or action.

43. A further consequence of the current Code provision is that it can have the effect of debaring members from the scrutiny function in respect of decisions in which they had no involvement. It is intended to provide that members should only be debarred from involvement in the scrutiny function in cases where they are scrutinising decisions they were involved in making. In addition, the rules do not currently refer to decisions made or action taken by the authority's executive. They therefore do not cover the case where a former member of the executive sits on a scrutiny committee to scrutinise decisions of the executive to which he or she contributed. It is proposed to amend the Code to indicate that the restriction will apply to former executive members who were involved in making the relevant decisions.

**44. I believe these clarifications reflect what was originally intended.**

#### **Participation in relation to prejudicial interests**

45. This is another area where critics of the current Code suggest it prevents members from speaking out about matters that affect their constituents and electors. The proposed revision intends to provide clearer and more proportionate rules to apply in respect of participation in council meetings for those who have public sector interests, i.e. who are members of another authority or a charity or lobbying body, and for those who are attending meetings to make representations.

46. The view expressed is that the fact that an issue considered by one body may affect another body with which the member is involved does not necessarily mean that the member's judgement of the public interest will be prejudiced. In such cases, the public service interest should only be considered prejudicial where (a) the matter relates to the financial affairs of the body concerned, or (b) where the matter relates to the determining of any approval, consent, licence or permission (e.g. in respect of planning and licensing) in relation to the body.

47. Where a member has a public service interest and (a) or (b) do not apply, then no prejudicial interest would arise and the member may speak and vote at the meeting. Any member (including a member with a public service interest to which (a) or (b) also apply), will not have a prejudicial interest where they attend a meeting to make representations, answer questions or give evidence, provided the committee agrees that the member may do so. After members have answered such questions or given such evidence, they must then withdraw from the room where the meeting is being held. All members with a prejudicial interest, regardless of the category of interest, would still continue to be subject to paragraph 11(1)(c), i.e. the requirement that members should not seek improperly to influence a decision about the matter. A response is required to the following:

**48. Q7. Is the proposed text, relaxing the rules to allow increased representation at meetings, including where members attend to make representations, answer questions or give evidence, appropriate?**

**49. I have provided a fuller description of this issue because I believe it is important and any suggestion to increase representation is to be welcomed and I would support the direction set out in the new Code, provided that there are fuller definitions of 'relates to the financial affairs of the body'. Some have questioned the inclusion of lobbying bodies in this context.**

### **Sensitive Information**

50. This is something that has featured in a number of cases and the proposals acknowledge that there may well be certain circumstances where sensitive information in respect of private interests should not be included on the register of interests where it is likely to lead to the member or those he or she lives with being subject to violence or intimidation

51. It is proposed that sensitive information, for example, where members are employed in areas of sensitive employment, such as certain types of scientific research, need not be made public if to do so would threaten the safety of the member and/or his family. A member who considers that the information which he or she would need to register is sensitive, will apply to the authority's monitoring officer for the interest not to be registered. If the monitoring officer is satisfied that the information is sensitive and the risk of intimidation of the member or those he or she lives with is real, the member may not include the sensitive information on the register of interests. Consistent with the above, the Code will be amended so that a member with an accepted sensitive interest should not have to disclose publicly the details of that sensitive information at a council meeting, although he or she will still need to disclose that they have a personal interest if this is the case in respect of a particular matter under discussion.

**52. This seems to be an appropriate safeguard to introduce.**

### **National Park and Boards Authorities – prejudicial interest**

**53. No comment.**

### **Gender neutrality of language**

54. The Code will be amended throughout to ensure gender neutrality of language. To signal the fact that the principles of the code refer both to women as well as men, and promote a more inclusive approach, we propose to make the language of the code gender neutral and replace gender-specific language such as 'he', or 'him', with 'he or she', or 'him or her'. A response is required to the following.

**55. Q8. Is there a better, more user-friendly way of ensuring the text is gender neutral, for example, would consultees consider that amending the wording to say 'you' instead of 'he or she' or 'him or her' would result in a clearer and more accessible code for members?**

**56. I would suggest the use of 'you' would be better.**

### **Recommendations**

**57. I suggest that members consider the comments made in bold and the responses made to the questions as the basis for a response to the consultation.**

Author - Mark Radford Ext. 7268

Date 6th February 2007

Report approved by: Mark Radford

List of background documents – as attached in the Annexes to this report.