

# Southend-on-Sea Borough Council

Report of Corporate Director Support Services  
to  
**Standards Committee**  
on  
**28<sup>th</sup> February 2007**

Report prepared by: John Williams

Agenda  
Item No.

**4**

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## Revised Model Code of Conduct for Local Authority Members

### *A Part 1 Public Agenda Item*

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#### **1. Purpose of Report**

The report provides details of the proposed changes to the Code of Conduct for Members and recommends responses to the Government's consultation on the proposed changes.

#### **2. Recommendation**

That the response at **Appendix 2** be submitted to the Department for Communities and Local Government, subject to such amendments or additions as the Committee thinks fit.

#### **3. Background**

3.1 The Department for Communities and Local Government (DCLG) published a Consultation Paper seeking views on the draft of a proposed new model Code of Conduct for local authority members on 22 January 2007. The closing date for responses is 9 March 2007.

3.2 The Government's stated intention is "to put in place a clearer, simpler and more proportionate Code of Conduct for members of Local Authorities which includes changes to the rules on personal and prejudicial interests". The changes are long awaited and have been the subject of widespread interest. There have been several iterations of the draft before this published version.

3.3 The Local Government Act 2000 set the ethical framework for local government on a statutory basis. Section 50 of the Act enabled the Secretary of State to introduce a model Code of Conduct and subsequent sections required Councils to adopt their own Code on the basis of the model. Southend-on-Sea Borough Council formally adopted the model Code of Conduct at its meeting on 28<sup>th</sup> February 2002 and it is incorporated into the Council's Constitution. The Act made very similar provisions for Parish and Town Councils and the Council assisted Leigh-on-Sea Town Council in adopting its own Code of Conduct. A copy of the Consultation Paper has been sent to Parish and Town Councils direct by the DCLG and a copy of this report is being circulated to Leigh-on-Sea Town Council, for their information.

- 3.4 With the benefit of experience of the working of the Code nationally since 2001, not least its enforcement by the Standards Board for England (SBE) and decisions made by the Adjudication Panel for England (APE) and the courts since, there has been considerable interest in proposals for changes to the Code.
- 3.5 Although the SBE consulted on the principles for a revised Code of Conduct for Members, and the Government issued a discussion paper on the revision in 2005, neither of those papers contained a draft revised text for the Code. However, on the basis that these are matters on which there has been previous consultation, the period for responses to the consultation has been reduced to just 6 weeks and it is clear that the Government intends to bring the amended Code into force in time for Local Authorities to adopt it at their annual meetings in early May 2007, before the enactment of the Local Government and Public Involvement in Health Bill, probably in October 2007.

## 2.0 Details of the Proposals

- 2.1 Attached at **Appendix 1** is a copy of the Consultation Paper. This was circulated to all Members on 29<sup>th</sup> January 2007. The draft model Code of Conduct forms Annex A and the specific questions posed by the Consultation Paper are at Annex B.
- 2.2 The scope of the proposed new Code of Conduct is broadly unchanged. However, the draft revised Code seeks to:
- Reflect the recommendations of the SBE following their review of the current Code
  - Reflect APE and High Court decisions on interpretation (discrimination, private capacity, disclosure in public interest)
  - Modify the effect of the Richardson<sup>1</sup> decision to allow a Member to make representations whilst having a prejudicial interest
  - Improve the structure and drafting of the Code (*Part 2 of the draft revised Code is reconstructed firstly to define personal interests and then to deal with disclosure, avoiding the difficult cross referencing in the current Code. The wording of some interests is adjusted to accommodate this structural change*).
  - Improve some definitions

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<sup>1</sup> Richardson & Orme v. North Yorkshire County Council

2.3 The draft revised Code provides a number of relaxations from the requirements of the current Code. In particular it:

- Removes the obligation to report allegations of failure to comply with the Code (current para. 7) *(The deletion of the duty on Members to report breaches by other Member seems reasonable. It will not, of course, prevent Members from reporting such breaches, but takes away the obligation to do so.)*
- Limits the obligation to disclose a personal interest of a family member, friend or person having close personal association to those that the Member is aware of, or ought reasonably to be aware of.
- Creates a new category of public service interest as to membership of another relevant authority, public authority or body the Member is appointed to by the authority.
- Provides for a Member, otherwise having a prejudicial interest, to attend a meeting for the purpose of making representations, answering questions, or giving evidence, provided the meeting agrees and subject to the Member withdrawing after so doing. *(This is not absolutely clear, but presumably a personal interest still needs to be disclosed by the Member. Meetings will require careful managing to ensure such Members leave during the decision making part of the meeting).*

2.4 The draft revised Code also imposes additional obligations on Members such as:

- Not to bully any person – 2(b), Cllr Flewitt has suggested that there should be some reference to frequency and context.
- Not to intimidate a person involved in proceedings under the Code – 2(c)
- Extends the meaning of political purposes in the use of the Authority's resources, to specifically include 'party political purposes'.
- Extends the provision on use of the authority's resources to include having regard to the Local Authority Code of Publicity – 5(b)(iii). *(There is a logic to this otherwise breaches would not be subject to sanction under the ethical framework, but the Code of Publicity - published in 1986 - is in need of review), and*
- An extended obligation to have regard to the advice of the Monitoring Officer and the Chief Finance Officer – 6(a).

2.5 The new provisions on bullying follow a concern by the SBE at the level of bullying occurring within Councils. The problem of bullying within Parish Councils has been described as endemic and the Society of Local Council Clerks has recently adopted an anti-bullying strategy. Clear guidance will be needed from the SBE, given that the Code does not clearly define bullying, in order for Members to understand what types of behaviour are acceptable and what go beyond the bounds of acceptability.

### **3.0 Omissions**

3.1 The draft Code does not, as predicted, include the ten “General Principles” of Local Government conduct<sup>2</sup> as a preface, presumably because of legal difficulty in drafting.

3.2 The opportunity to bring the application of the Code and the law of bias closer together has not been taken in the draft. It would be helpful if there was an express reference in paragraph 9 of the Code under the heading “Prejudicial interests” to the fact that a Member should not participate in decision-making, notwithstanding that a prejudicial interest does not arise, if such participation is likely to give rise to a real possibility of bias. Such a provision would provide a direct link between the common law test of bias and the Code, reinforcing the principles which need to be applied by Members in determining whether to participate in decision making

3.3 In practical terms there is generally a good understanding by Members of the Code and a familiarity with its provisions. It is however regarded by some as an all-inclusive Code governing the ability to participate in meetings and decision-making. Clearly, this is not the case since the law of bias also is a significant consideration in this area. Whilst the Code cannot be expected necessarily to deal with bias in detail, it would be useful for the Code explicitly to recognise the existence of the bias provisions.

### **4.0 Drafting aspects**

4.1 Whilst the reconstruction of the interests’ part of the Code (Part 2) helps to improve clarity, it would seem sensible to go one stage further and include all the provision dealing with ‘public service interests’ in a separate paragraph. – 8(2), 8(7)(a)(i), (ii) and (iii), 9(2) and 9(4)(b). Having different definitions for public service interest in 8(7)(a) and 9(4) is confusing.

4.2 There are a number of new phrases in the draft Code which now require definition, including:

- (a) “Close personal association” – Paragraph 7(c)(i) - this clearly extends beyond mere friendship, but how far? Does “personal” in this context mean that it does not include work colleagues? Given that case law was beginning to build up on what constituted a “friend”, how useful is this addition?

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<sup>2</sup> The Relevant Authorities (General Principles) Order 2001

- (b) “Family” – Paragraph 7(c)(i) - the current Code uses the word “relative” and defines “relative”. The new Code uses “family”, but fails to define it. Is it the member’s household, irrespective of blood relationship? Or is it blood relatives even if living separately? What degree of separation takes an individual outside the scope of “family”?
  - (c) “Lobbying Organisation” – Paragraph 9(4)(b) - is it a lobbying organisation because it occasionally lobbies, or does it have to lobby Members or Local Authorities, or does it have to spend a specified proportion of its annual expenditure on seeking to influence public opinion?
  - (d) “Of a financial nature” – Paragraph 11(2) - what is it that makes an interest “of a financial nature”? Is it that the Member or a friend etc., or an associated body, stands to gain or lose financially in any way, or does the gain have to be primarily financial, or more directly to the Member him or herself?
  - (e) “Philanthropic Organisation” – Paragraph 9(4)(b) - Is this the same as “a body directed to charitable purposes”, or does “philanthropic” extend beyond the charitable objects in the Charities Act 2006
  - (f) “Relates to” – This phrase is used repeatedly throughout the new Code, in a number of different contexts and its widespread use may create real problems of interpretation for the future.
- 4.3 The effect of the dispensation in paragraph 8(2) generally is a concern. Members are now accustomed to disclosing interests at the beginning of the meeting. There does not seem to be any value gained by changing from disclosure at the beginning whether the Member speaks or not. Curiously, in the new draft, if the Member does not speak, there is no requirement to declare the public service interest. This may seem very odd to a member of the public for one Member to disclose an interest and another not (because s/he did not speak) when both take part in the decision by voting. From an evidential aspect, in a subsequent investigation, the question of whether a Member spoke or not will be more difficult to investigate, than whether the interest was declared or not.

## 5. Conclusion

- 5.1 The draft revised Code of Conduct appears to be a genuine attempt to improve the present Code and to resolve some of the issues which have arisen with it. However, it is suggested that some amendments are required.
- 5.2 A suggested response to the Consultation Paper is attached at **Appendix 2**.

## **6. Corporate Implications**

### 6.1 Resource Implications (Finance, People, Property).

There are no financial implications at this stage. There will be financial implications when the new Code is introduced in terms of Training.

### 6.2 Contribution to Council's Vision & Critical Priorities

N/A

### 6.3 Consultation

The Consultation Paper has previously been sent to all Members.

### 6.4 Equalities Impact Assessment

N/A

### 6.5 Risk Assessment

N/A

### 6.6 Value for Money

N/A

## **7. Background Papers**

None

## **8. Appendices**

Appendix 1 – Consultation Paper

Appendix 2 – Suggested Response

### Specific Questions - Suggested Responses

- 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?**

The proposed amendment incorporates the requirements of Article 10(1) of the European Convention on Human Rights (freedom of expression). However, in practice it will be extremely difficult for a Member to weigh up the balance of competing interests of preserving confidentiality on the one hand and the restricted number of cases where it would be defensible to disclose that information on the other e.g. to make known the occurrence of a criminal offence. It would be difficult to determine when disclosure will be “reasonable and in the public interest”, given that this is the test which local authorities are themselves applying when deciding whether or not information should be within the public domain or should remain exempt.

As currently drafted, the Code does not make it clear whether it is a two part test, namely that the disclosure must be reasonable and in the public interest and made in good faith, or whether there is a defence if either of these tests can be satisfied.

- 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 a Member’s private capacity to those activities which have already been found to be unlawful by the courts, appropriate?**

This appears to be a reasonable approach as it means that there is a fairly high threshold of private behaviour before it results in a breach of the Code.

**[Note:** The Ken Livingstone Case has recently limited the scope of the Code of Conduct in a Member’s private capacity only to conduct where it can be established that there is a direct link with the Member’s office. However, there is a provision contained in the Local Government and Public Involvement in Health Bill, which if enacted, will make it clear that behaviour in a private capacity can be included within the remit of the Code.]

- 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, eg via guidance issues 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?**

In practice the Publicity Code is a useful tool which assists Local Authorities and Members in addressing sensitive issues at sensitive times e.g. in the run up to elections. Whilst the provisions of the publicity Code need to be reviewed, it should be retained and the review could also consider how best to assist authorities currently not subject to its remit.

**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?**

The provisions regarding gifts and hospitality seem excessive. At present authorities maintain a separate gift and hospitality register, which does not have to be open to public inspection but often are. To translate gifts and hospitality of a value of £25 into interests requiring registration and declaration seems unnecessarily bureaucratic and burdensome, particularly when a bunch of flowers, which are arguably a token of appreciation rather than an imputation of ulterior motive, can cost £25 nowadays. Furthermore, the requirement for disclosure of such an interest for a period of 5 years after registration also seems excessive (not least for Members in remembering that they had received such gifts or hospitality).

There should also be clarification in respect of gifts and hospitality received by the Mayor of the Council in his/her capacity as Civic Head; this should not be declarable.

**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?**

There has been difficulty with the existing Code in Members determining who constitutes a friend. This will be compounded by the new requirement to consider not only friendship but also “close personal association”. This will be particularly difficult in the context of a community where most people know each other. The terms “close personal association” and “family” need to be defined.

**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?**

Exemptions could be extended usefully in at least two respects.

1. to expand para. 9 (2)(b)(i) and provide that a Member who is a tenant, lessee or licensee generally would not have a prejudicial interest, save where the debate specifically relates to his or her property. This would cover e.g. allotments and garages which can be problematic in some authorities.



2. to extend para 9(2)(b)(vi) in respect of bestowing the title of Freeman not only on a member, but on a spouse, friend or close associate. In practice the candidates for such an award are likely, by virtue of the service they have provided to the community, to have come into close association with Members.

**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?**

Paragraph 9(3) seems reasonable – subject to it being clear whether a Member who is biased, can take advantage of this provision. (See additional point below.)

**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?**

The draft Code is written in language that is intended to be user friendly. It is clearer and more understandable, although the lack of definitions creates ambiguity in many places.

**Additional Point**

The Code should refer specifically to the Law of Bias and that a Member who is biased (e.g. by virtue of a statement showing pre-judgement):

- (a) Cannot participate in the decision making, even if he / she does not have a prejudicial interest; and
- (b) If he / she does participate, then this will constitute a breach of the Code, namely paragraph 4.