

# Southend-on-Sea Borough Council

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

Report prepared by: John Williams, Monitoring Officer

Agenda  
Item No.

**2**

---

## Adoption of the new Members' Code of Conduct

### *A Part 1 Public Agenda Item*

---

#### 1. Purpose of Report

The Local Authorities (Model Code of Conduct) Order 2007 came into effect on the 3<sup>rd</sup> May 2007. This prescribes a new model Code of Conduct for Members of all local authorities. The Council has until 1<sup>st</sup> October 2007 to adopt the Code.

This report summarises the key provisions of the new Code and explains the adoption requirements, with a recommendation that the Council should adopt the new Code at its meeting on 28 June 2007.

#### 2. Recommendations

- 2.1 That the Council be recommended to adopt the new model Code of Conduct set out in the Local Authorities (Model Code of Conduct) Order 2007, together with a Preamble outlining the ten general principles governing the conduct of Members of local authorities;
- 2.2 That this new Code and Preamble, as set out in **Appendix 1**, be adopted in place of the Council's existing Code of Conduct, with effect from the 28<sup>th</sup> June 2007;
- 2.3 That Part 5(a) of the Constitution be amended accordingly, together with all necessary consequential amendments to the Constitution;
- 2.4 That the Monitoring Officer ensures that all Members (including co-opted Members) and members of Leigh Town Council complete fresh Register of Interest forms and receive appropriate training in respect of the new Code of Conduct and that the Standards Committee monitors progress accordingly;
- 2.5 That it be noted that Leigh Town Council adopted the new Code at its meeting on 9<sup>th</sup> May 2007.

### 3. Background

- 3.1 The Standards Committee considered a report on the 28<sup>th</sup> February 2007 which set out proposed changes to the Members' Code of Conduct. A response to the Department for Communities and Local Government consultation paper was agreed and submitted.
- 3.2 The Local Authorities (Model Code of Conduct) Order 2007 has now been made and came into force on the 3<sup>rd</sup> May 2007. The Council must adopt the new Code before 1<sup>st</sup> October 2007.
- 3.3 The recommendation from the Standards Board for England is that Local Authorities should adopt the new Code in its model form without amendment. This is to give certainty to Members and the public as to what standards are expected; ensure consistency throughout England and minimise the legal risk of adopting additional provisions that are unenforceable. The Standards Board for England also recommends that local authorities include a Preamble to the Code outlining the ten general principles governing the conduct of Members: These principles are set out in the Relevant Authorities (General Principles) Order 2001.
- 3.4 The Government's stated intention was 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 main provisions of the new Code are set out in 3.5 below and enclosed at **Appendix 2** is a Guide for Members produced by the Standards Board for England together with their Pocket Guide.

#### 3.5 Main Provisions of the new Code

##### **Paragraph 1 - Introduction and interpretation**

Paragraph 1 makes it clear that the new Code applies to all Members and co-opted Members and it is the responsibility of each Member to comply with it.

It also explains that references in the new Code to a 'meeting', includes Council, Cabinet, committees, sub-committees and joint committees. Accordingly, the declaration of interest requirements in the new Code do not strictly apply to informal meetings with other Members or officers, although the general obligations of the new Code will apply in such circumstances.

##### **Paragraph 2 - Scope**

As under the existing Code, the new Code is intended to apply when a Member is acting in an **official capacity**. Although not well phrased, paragraph 2.3 of the new Code states that in some circumstances it will also apply to conduct in a **private capacity**, but only where a criminal conviction has been imposed as a result of it.

The 3 instances set out in the new Code where this is the case are in relation to intimidation (paragraph 3.2.c); bringing the office or authority into disrepute (paragraph 5); and improperly seeking an advantage (paragraph 6.a). The last 2 instances are also included within the existing Code.

However, until the proposed amendments to section 52 of the Local Government Act 2000, which are currently before Parliament, reinstate the situation prior to the decision in the Ken *Livingstone* case, the new Code will not apply to any conduct outside the performance of a Member's functions.

### **Paragraphs 3-7 - General Obligations**

The positive obligation to treat others with respect remains (paragraph 3.1 refers).

Rather than being required to promote equality as under the existing Code, the new Code requires Members not to do anything that may cause the authority to breach any of the equality enactments (paragraph 3.2.a).

A new requirement not to bully any person has been inserted (paragraph 3.2.(b)).

The provisions regarding confidentiality have been changed to allow disclosure of confidential information if it is reasonable and in the public interest to do so and if disclosure is made in good faith and in compliance with the reasonable requirements of the authority (paragraph 4.a.iv). Further details are set out in the Standards Board Guidance at **Appendix 2**.

Paragraph 5 retains the obligation that Members must not conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute – but see the note in paragraph 2 (above) about conduct in a private capacity.

Paragraph 6 contains similar provisions to the existing Code about Members not using their position to secure advantages for themselves or another and not mis-using Council resources.

There is a new obligation on Members to have regard to the Code of Recommended Practice on Local Authority Publicity (paragraph 6.c). Members will be familiar with this as it has been the subject of previous advice issued by the Monitoring Officer, especially during the election period.

In addition to the requirement to have regard to the advice of the Section 151 Officer and the Monitoring Officer, there is now a requirement in paragraph 7.2 to give reasons for all decisions in accordance with any statutory requirements. This reinforces legislative provisions already in place, for example, in respect of planning and licensing decisions.

There is no longer any requirement on Members to report any breaches of the Code to the Standards Board; the whistle blowing provision has gone.

## **Paragraph 8 - Personal Interests**

Paragraph 8 of the new Code provides that a Member will have a personal interest in any business of the Council where **either**;

(a) It relates to or is likely to affect those personal interests set out in the list in Paragraph 8(1)(a) - which have to be registered under paragraph 13.

This list is very similar to the list in the existing Code, except that it now includes 'the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25' (paragraph 8.a.viii).

Although such gifts or hospitality had to be registered under the existing Code, receipt did not constitute a personal interest and did not need to be declared at meetings; **or**

(b) where a decision in relation to that business might reasonably be regarded as affecting the well-being or financial position of the Member, or 'a relevant person', to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward affected by the decision.

Relevant person includes 'family' or 'any person with whom you have a close personal association' as well as employers of those people. Neither of these terms is defined – although the guidance of the Standards Board at **Appendix 2**, provides assistance.

The use of the terms 'friend' and 'relative' in the existing Code have been removed.

Importantly, the new Code refers to a decision affecting a Member or relevant person, to a greater extent than the majority of other taxpayers or inhabitants of the ward. This is far less onerous than under the existing Code, which refers to a decision affecting a Member or friend/relative to a greater extent than other taxpayers or inhabitants of the whole Borough. It means that where a decision would have a major effect on a Member, that Member will have no interest at all, if at least half of the other residents of the Ward are equally affected.

## **Paragraph 9 – Disclosure of Personal Interests**

This paragraph restates the current position that a Member who has a personal interest in any item of business and who attends a meeting of the authority at which the business is considered, must disclose that interest and the nature of it.

However paragraph 9 introduces some new provisos to this;

- Where the personal interest relates to a body to which the Member has been nominated or appointed by the Council, or relates to a body exercising functions of a public nature, then the personal interest need

only be declared when and if the Member actually speaks on the relevant issue (paragraph 9.2)

- A personal interest arising from the receipt of a gift or hospitality need only be declared if they were received in the previous 3 years.
- The obligation to declare only applies where the Member is aware or ought reasonably to be aware of the interest.
- Where the personal interest includes sensitive information (see paragraph 14 below), then it need not be disclosed at the meeting, although the fact that there is a personal interest must be.

As under the existing Code, if a personal interest is declared which is not prejudicial, the Member may stay, speak and vote.

### **Paragraph 10 - Prejudicial Interest generally**

The basic prejudicial interest test is the same as under the existing Code; namely that where there is a personal interest, then the interest is also prejudicial where it 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 judgment of the public interest (paragraph 10.1).

However, the definition is then radically restricted, because paragraph 10.2 provides that even if the interest satisfies the general test in paragraph 10.1, it will still not amount to a prejudicial interest unless;

- the matter under discussion affects the financial position of the Member (or relevant person described in paragraph 8) ; or
- the matter relates to the determining of any approval, consent, licence, permission or registration in relation to the Member (or relevant person).

This means that unless the matter comes within this defined list of approvals, consents etc., it cannot give rise to a prejudicial interest, however much it affects the general well-being of the Member (or relevant person), unless it actually affects the financial position of that Member (or relevant person). This is a substantial limitation on the definition of a prejudicial interest and was canvassed in the consultation draft only in respect of 'public service interests', but has been implemented in respect of all personal interests. It effectively takes us back to the old concepts of pecuniary and non-pecuniary interests as it was before the Local Government Act 2000.

Furthermore, paragraph 10.2(c) sets out a list of certain interests which specifically do not constitute prejudicial interests, namely where the matter relates to specific Council functions such as Council housing; school meals, school transport and travel expenses; statutory sick pay; Members' Allowances, payments or indemnities; ceremonial honours; or setting the Council Tax. (Under the existing Code, Members have a discretion whether to treat such interests as prejudicial – now they are stated not to be prejudicial interests at all).

The rules on prejudicial interests set out above do need to be carefully studied as a number of them are different from the current position and Members need to ensure that they are familiar with them.

### **Paragraph 11- Prejudicial Interests arising in relation to Scrutiny Committees**

Paragraph 11 provides that a Member who was involved in making a decision will have a prejudicial interest in a scrutiny committee's consideration of that decision. This will require the Member to declare that interest and normally to withdraw.

However, in accordance with S.21(13) of the Local Government Act 2000 and the Council's Constitution, this does not prevent Cabinet members attending scrutiny committees to answer questions on called-in items.

### **Paragraph 12 - Effect of Prejudicial Interests on Participation**

The basic rule is unchanged; namely that unless a dispensation has been obtained from the Standards Committee, a Member with a prejudicial interest;

- must withdraw from the room or chamber as soon as the relevant item is considered;
- must not exercise executive functions; and
- must not seek improperly to influence a decision about that business.

(Note; Dispensations can only be granted at the present time if over 50% of the authority or committee members would be prevented from taking part because of prejudicial interests- see page 28 of the Standards Board Guidance at **Appendix 2)**

However, under the new Code, a Member with a prejudicial interest may make representations, answer questions or give evidence at a meeting open to the public, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise. After speaking, the Member must then immediately withdraw from the room or chamber.

The intention is to ensure that a Member has the same right as an ordinary member of the public to speak at a meeting open to the public, despite having a prejudicial interest. For example, this will generally allow a Member who lives very near to a controversial planning application site (and so has prejudicial interest) to attend the Development Control Committee and to speak; since public speaking operates at the committee.

### **Paragraph 13- Registration of Members' Interests**

Paragraph 13 continues the current requirement of Members to register with the Monitoring Officer details of their various personal interests as set out in paragraph 8(1)(a) – see above.

Entries must still be put on the Register of Members' Interests within 28 days of a Member being elected or appointed as a member of the authority. Any change to a Member's personal interests must also be noted on the Register within 28 days of the Member becoming aware of the change.

In terms of the new obligation to register gifts and hospitality over £25 in the main register, the intention is to continue to use the Gifts/Hospitality Book, and to keep this at the front of the main Register of Members' Interests.

### **Paragraph 14 – Sensitive Information**

Paragraph 14 is a new provision concerning 'sensitive information', which is defined as information whose public availability would be likely to create a serious risk that the Member, or someone living with the Member, may be subject to violence or intimidation.

A Member who considers that information relating to a personal interest includes sensitive information can, with the agreement of the Monitoring Officer, not include the sensitive information in the Register of Members' Interests.

### **3.6 Common law bias and pre-determination**

It was hoped that the opportunity would be taken by the Government to include a specific provision in the new Code in respect of bias and pre-determination – primarily to give clarity to Members as to when it would not be appropriate to participate in decision making, even in the absence of a prejudicial interest.

The opportunity has not been taken. Accordingly Members will still need to separately consider whether they should 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. Bias considerations are particularly relevant in the context of regulatory decisions, planning, licensing etc, where rules of natural justice and procedural fairness apply.

### **3.7 Post adoption requirements**

Following the adoption of the revised Code, Section 51 of the Local Government Act 2000 provides that the Council must:

- ensure that copies of the revised Code are made available for public inspection at the Council's offices;
- publish notice of the adoption of the revised Code in a local newspaper; and
- send a copy of the adopted Code to the Standards Boards for England.

### 3.8 **Members undertaking to comply with the Code.**

The form of undertaking signed by Members following their election, observes the statutory form and it is not considered necessary for Members to sign a further undertaking to observe the new Code.

### 3.9 **Register of Interests- Re-registration**

Once the new Code is adopted, all Members will be required to complete a fresh Register of Members' Interests Form, in order to satisfy the requirements of the new Code.

### 3.10 **Leigh Town Council**

The Standards Committee's responsibilities extend to Leigh Town Council. The Town Council introduced the new Code from 9<sup>th</sup> May 2007. In doing so they included paragraph 12(2) of the Code, which was optional for Town Councils, but is mandatory for this Council.

### 3.11 **Guidance and training**

A training session on the new Code is being arranged for all Members and for members of Leigh Town Council.

## 4. **Corporate Implications**

4.1 Resource Implications (Finance, People, Property).  
There is a training requirement for all Members

4.2 Contribution to Council's Vision & Critical Priorities  
n/a

4.3 Consultation  
Dealt with by the Government

4.4 Equalities Impact Assessment  
Dealt with by the Government

4.5 Risk Assessment  
Local Authorities have until 1<sup>st</sup> October 2007 to adopt the new Code of Conduct. The recommendation to adopt the new Code at Council on 28<sup>th</sup> June is intended to minimise the possibility of confusion and uncertainty that would arise if 2 codes of conduct were in force for any period of time, thus providing clarity for elected and co-opted Members. Early adoption will also enable Members to take advantage of the revised provisions regarding the declaration of interests.



- 4.6 Value for Money  
No issues
- 4.7 Community Safety Implications  
No issues
- 4.8 Environmental Impact  
None

**5. Background Papers**

None

**6. Appendices**

- Appendix 1 -** New Members' Code of Conduct
- Appendix 2 -** Standards Board Guide for Members on the new Code  
+ Pocket Guide