

EAST HERTS COUNCIL

STANDARDS COMMITTEE – 10 JULY 2007

6. REPORT BY MONITORING OFFICER

ADOPTION OF THE REVISED CODE OF CONDUCT

WARD(S) AFFECTED: ALL

RECOMMENDATION - that (A) the Model Code of Conduct issued by the Secretary of State for Communities and Local Government, as set out in the Local Authorities (Model Code of Conduct) Order 2007, together with a preamble incorporating the ten general principles governing the conduct of Members, be adopted, and

(B) Parish Councils within the District be recommended to adopt the Code and preamble.

1.0 Purpose/Summary of Report

1.1 The revised Code of Conduct for Members has been published. It came into force on 3 May and every local authority in England will have to adopt it with or without additions by resolution by 1 October 2007, or the mandatory text will apply in default.

2.0 Contribution to the Council's Corporate Objectives

2.1 The report contributes to the Council's corporate priority to deliver responsible community leadership that engages with our partners and the public.

3.0 Background

3.1 Members considered proposals for a revised Members Code of Conduct at the Standards Committee meeting on 26 February 2007, and agreed a response to the Consultation Paper issued at that time.

3.2 Following the consultation process, the Secretary of State for Communities and Local Government made the Local Authorities (Model Code of Conduct) Order 2007 on 2 April 2007. The Order contains a new Model Code, which is attached as Appendix 'A6' (pages 6.8 – 6.14). Under Section 51 of the Local Government Act

2000, it is the duty of a Local Authority to adopt the new Model Code within 6 months of the making of such an Order.

3.3 The Code has been revised. The duty to report breaches of the Code by other Members has been removed. At the same time, there are new requirements to prevent bullying, victimisation and intimidation of participants in standards proceedings, a new public interest defence to complaints of breach of confidentiality and new exceptions to enable Members to represent their local community.

4.0 Report

4.1 The 10 Principles forming a preamble to the Code are derived from the original Nolan Committee's Principles of Public Life. They set out the basis for the obligations contained within the Code and may be a helpful summary for members of the ethical framework within which they should act (they can be found at the end of Appendix 'A6'). Compliance with the Principles is not of itself a statutory obligation but failure to act in accordance with the Principles could potentially result in a breach of the Code as constituting, for example, conduct which could reasonably be regarded as bringing a member's office or authority into disrepute.

4.2 Members could decide not to include the preamble. This would not change the nature of the obligations under the Code but would remove the context and basis within which the Code has been drafted and how it is likely to be interpreted.

4.3 The Code is intended to apply when a Member is acting in an official capacity. Paragraph 2.3 of the Code states that in some circumstances the Code will also apply to conduct in a private capacity, but only where there is a criminal conviction. The 3 instances set out in the Code where this is the case are in relation to intimidation; bringing the office or authority into disrepute and improperly seeking an advantage. The last 2 instances were also included within the previous Code.

4.4 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 *Livingstone* case, only in very limited circumstances will the Code apply to conduct outside of a Member's official capacity.

5.0 General Obligations

- 5.1 The positive obligation to treat others with respect remains (paragraph 3.1). 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. A new requirement not to bully any person has been inserted (paragraph 3.2.b).
- 5.2 The provisions regarding confidentiality have been changed also 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).
- 5.3 There is a new obligation on Members to have regard to the Code of Recommended Practice on Local Authority Publicity (paragraph 6.c). Members may be familiar with this as it is the basis of the Council's media guidelines which is set out in the Constitution.
- 5.4 The obligation to have regard to any relevant advice given by the Monitoring Officer and the Chief Finance Officer has been retained and strengthened (paragraph 7.1).
- 5.5 There is no longer any requirement on members to report any breaches of the Code to the Standards Board.

6.0 Declarations of Interest

6.1 Personal Interests

- 6.2 There is a new list of personal interests required to be registered in the Register of Members Interests (paragraph 8.1.a) which is similar to the current list. A new personal interest has been added where it relates to or is likely to affect the interests of any person from whom at least £25 worth of gift or hospitality has been received (paragraph 8.a.viii). Although such gifts or hospitality did need to be registered under the current Code, receipt did not constitute a personal interest and did not need to be declared at meetings.
- 6.3 A personal interest should be declared at a meeting if it is registered in the Register of Members' Interests. A personal interest should also be declared where the matter under discussion 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.

- 6.4 The list of relevant people includes family or ‘any person with whom you have a close personal association’ as well as employers of those people. A Member is, only liable to declare the interest if aware or ought reasonably to be aware of its existence.
- 6.5 Personal Interests as listed in paragraph 8.1.a should be registered in the Register of Members’ Interests, which is maintained by the Monitoring Officer, and changes notified within 28 days, as now. If a Personal Interest arises at a meeting, then the existence and nature of the interest should generally be declared at the outset whether or not the Member intends to speak (paragraph 9.1).
- 6.6 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, the new Code proposes that the personal interest need only be declared at meetings where the Member actually speaks on the relevant issue (paragraph 9.2).
- 6.7 As now, if a Personal Interest is declared which is not prejudicial, the Member may stay, speak and vote.
- 6.8 There are some detailed provisions with regard to disclosure of particular interests that Members will need to understand in case any apply to their own circumstances. Details of ‘sensitive information’ that could create a serious risk of violence or intimidation need not be disclosed (paragraph 9.5) or registered if the Monitoring Officer agrees.
- 6.9 The Personal Interest test under the current Code refers to a Member having such an interest if a decision upon it might reasonably be regarded as affecting the well being or financial position of the Member, a relative or a friend to a greater extent than other council tax payers, ratepayers or inhabitants of the authority’s area.
- 6.10 The new Code has removed the reference to ‘friend’ and has used a wider term covering any person with whom the Member has a ‘close association’. The number of declarable personal interests is likely to be reduced by restricting declarations to those matters affecting the majority of the inhabitants of the ward affected by the decision. The term ‘family’ is no longer defined.

- 6.11 Prejudicial Interests
- 6.12 The basic prejudicial interest test is the same as now; 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 members judgment of the public interest (paragraph 10.1).
- 6.13 The new Code provides (paragraph 10.2) that a Member does not have a prejudicial interest where:
- the matter under discussion does not affect the financial position of the Member, or any person or body described in paragraph 8 in relation to whom a Member may have a personal interest;
 - the matter does not relate to the determining of any approval, consent, licence, permission or registration in relation to the Member, or any person or body described in paragraph 8 in relation to whom a Member may have a personal interest;
 - the matter relates to specific exceptions such as housing; school meals, school transport and travel expenses; statutory sick pay; Members allowances, payments or indemnities; ceremonial honours; or setting the Council tax.
- 6.14 The exceptions set out above do need to be carefully studied as a number of them are different than the current position and Members need to ensure that they are familiar with them.
- 6.15 Effect of Prejudicial Interests on participation
- 6.16 Unless a dispensation has been obtained from the Standards Committee, a Member with a prejudicial interest must withdraw from the room or chamber. Prior to withdrawing, 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.
- 6.17 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.

- 6.18 The current requirements not to exercise Executive functions where there is a prejudicial interest, or to influence improperly a decision are repeated in the new Code.
- 6.19 There are two important changes to the section of the Code dealing with prejudicial interests. The first change is that a Member will have same right as any member of the public to address the meeting even if that member has a prejudicial interest. After speaking, however, the Member will then need to immediately withdraw from the room. This will, for example, allow Members who belong to special interest groups or who were elected on a particular issue to make representations at a meeting open to the public.
- 6.20 The second significant change concerning the list of exemptions relates to the way the Code is worded. Currently, if one of the exemptions applies a Member may regard him or herself as not having a prejudicial interest. This means that a Member has to make a conscious decision whether or not to take advantage of one of the exemptions or whether to declare a prejudicial interest. In the new Code, it is clearly stated that a Member does not have a prejudicial interest in one of the matters in the list of exemptions so there is no discretion in the matter any longer.
- 6.21 The most significant exemption is where the matter under discussion does not affect the financial position of the Member or any person or body in whom the Member has a financial interest. This, in effect, revives the old 'pecuniary interest' test so that if there is no pecuniary or financial interest, then the Member does not have a prejudicial interest to declare unless the matter relates to a licensing or regulatory matter affecting the member, or person or body in which the Member may have a personal interest.
- 6.22 It was hoped by a number of Monitoring Officers that the new Code would include a specific section on 'bias and predetermination' but this has not been done to consider separately whether they are approaching an issue with an open mind and able to take part in the discussion even if they do not have a prejudicial interest because the outcome would have no effect on their financial position.

7.0 Conclusion

- 7.1 There have been a number of significant changes from the current Code and, indeed, from the Code issued for consultation earlier this year. The delicate balance between the freedom of Members to act as local advocates, and the need to ensure that decisions are made without the improper influence of personal interests has been re-

examined in the new Code and greater participation by Members with prejudicial interests has been allowed.

7.2 There will be consequential changes needed to the Council's existing Codes and Protocols as a result of the adoption of the Code, and it is suggested that these be included in the Standards Committee Work Programme for the current year.

8.0 Consultation

8.1 There has been no consultation.

9.0 Legal Implications

9.1 The legal implications are contained within the report.

10.0 Financial Implications

10.1 There are none.

11.0 Human Resource Implications

11.1 There are none.

12.0 Risk Management Implications

12.1 There are none.

Background Papers

The Local Authorities (Model Code of Conduct) Order 2007.

Contact Member: Councillor John Warren – Chairman of the Standards Committee

Contact Officer: Simon Drinkwater – Director of Neighbourhood Services & Monitoring Officer

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1. —(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

"meeting" means any meeting of—

(a) the authority;

(b) the executive of the authority;

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2. —(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3. —(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7. —(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

Interests

Personal interests

8. —(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

- (ii) any body—
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in your authority's area in which you have a beneficial interest;
 - (x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
- (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—
- (i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;
 - (ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
 - (iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

- (a) a member of your family or any person with whom you have a close association; or
- (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
- (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
- (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9. —(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "executive decision" is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000].

Prejudicial interest generally

10. —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business 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.

(2) You do not have a prejudicial interest in any business of the authority where that business—

- (a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12. —(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a

sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members' Interests

Registration of members' interests

13. —(1) Subject to paragraph 14, you must, within 28 days of—

- (a) this Code being adopted by or applied to your authority; or
- (b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

Sensitive information

14. —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Table 1 The Ten General Principles of Public Life

Selflessness – members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and integrity – members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly, and should on all occasions avoid the appearance of such behaviour.

Objectivity – members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability – members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness – members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal judgement – members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for others – members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers and its other employees.

Duty to uphold the law – members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship – members should do whatever they are able to do to ensure that their authorities use their resources prudently, and in accordance with the law.

Leadership – members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.