

Joint Meeting of the Durham County Council, County Durham and Darlington Fire and Rescue Authority and Durham Police Authority Standards Committees

22 May 2007

Revised Model Code of Conduct for Local Authority Members

Report of Lesley Davies, Monitoring Officer

Purpose of the Report

1. The purpose of the report is to ask the Standards Committees to consider the recommendation they should make to their respective authorities, i.e. the County Council, the Fire and Rescue Authority and the Police Authority regarding the adoption of a revised Member Code of Conduct.

Background

2. The Department for Communities and Local Government (DCLG) issued the Local Authorities (Model Code of Conduct) Order 2007 on 4 April which prescribed a revised model code of conduct for members of local authorities. The order came into effect on 3 May 2007 and a copy is attached at Appendix 1. Authorities have until 1 October 2007 to adopt the Code formally.

3. The Revised Code applies to all members and co-opted voting members of relevant authorities in England and police authorities in England and Wales. It consolidates and replaces the four separate model codes for members of principal authorities; parish councils, the National Park and Broads authorities, and police authorities.

4. The revised code delivers the commitment given in the Local Government White Paper to introduce:

- a clearer, simpler and proportionate code, and
- amended rules on personal and prejudicial interests to remove the current barriers to councillors speaking up for their constituents, for example on planning and licensing issues, and for public bodies on which they have been appointed to serve.

5. The revised Code has been informed by responses to consultation which DCLG undertook earlier this year. Members might recall we determined our joint response to the consultation at our meeting on 8 March.

6. The Standards Board played a key role in the consultation process and in the coming months it will publish revised guidance on the new Code as well as undertaking a series of national roadshows to share advice and experience on its implementation. An extract from the current Standards Board Bulletin (issue 33) which provides an overview of the changes to the Code is attached at Appendix 2.

Recommendation

7. Each Standards Committee is asked to recommend that their respective parent authority adopts the Model Code of Conduct without any additional local provisions.

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Extract from Standards Board Bulletin Issue 33 – The New Code of Conduct

The new Code of Conduct

The revised Model Code of Conduct came into force on 3 May 2007. Authorities have until 1 October 2007 to adopt the Code formally. If an authority fails to adopt the Code before that date, the mandatory provisions of the Code will apply until the authority adopts its own Code.

There are a number of major changes to the Code and these are summarised below

- The definition of a **personal interest** has been relaxed. Interests that are shared with most people in the ward or electoral division affected by the decision will not have to be declared. However, the definition will not change for many parishes or other authorities that do not have wards or electoral divisions.
- **Dual-hatted members** and those members appointed or nominated by the authority to outside bodies will also benefit from changes to the rules regarding declaration of interests. Where a matter that affects the other body is being discussed at a meeting of the authority, these members will not be required to declare that they have a personal interest in the matter before they vote, unless they wish to speak on the matter or where the personal interest is also a prejudicial interest.
- **Prejudicial interests** now only arise if a matter affects a member, their family, or their close associates in the following ways:
 - it relates to their finances or well-being
 - it concerns regulatory functions such as licensing or planning which affect them
 - and a reasonable member of the public with knowledge of the facts would believe their ability to judge the public interest would be impaired.

Even where members have a prejudicial interest, the Code supports their role as a community advocate and enables them, in certain circumstances, to represent the community and to speak on issues important to it and to the member Paragraph 12(2) of the Code gives members with a prejudicial interest in a matter the same rights as members of the public to speak to a meeting on the matter. However, once they have done so, the member must immediately leave the meeting room, as currently required, and cannot remain in the public gallery to observe the vote on the matter.

- **Gifts or hospitality** over the value of £25 must now be included in the member's register of interests. This means that a personal interest must be declared at any meeting where a matter relating to that interest is discussed.

- The **unlawful discrimination provision** has been replaced by a duty not to do anything that may cause the authority to breach its statutory duties under equality laws (including anti-discrimination laws) As a result, discriminatory behaviour can now be dealt with through the Code.
- A new provision makes it clear that **bullying** is prohibited by the Code.
- Another new provision states that members must not **intimidate or attempt to intimidate** anyone involved in an investigation, such as a complainant, a witness or an officer involved in the conduct of an investigation.
- The Code does not incorporate the **Ten General Principles of Public Life** but members are required to read the Code together with these general principles. Although members are not legally obliged to observe the principles, a failure to follow them may indicate behaviour that could potentially breach the Code.
- Subject to the enactment of the Local Government and Public Involvement in Health Bill, the Code will apply where **criminal activity** has been committed in a private capacity, but not in relation to other conduct which solely concerns a member's private life.
- The ban on **disclosing confidential information** has been relaxed to allow disclosure of confidential information where:
 - the disclosure is made to a third party for the purpose of obtaining professional advice (provided that person agrees not to disclose it).
 - the disclosure is reasonable and in the public interest, made in good faith, and does not breach the reasonable requirements of the authority.

The Standards Board's comprehensive guidance on the new Code of Conduct is available on our website at www.standardsboard.gov.uk. We will be sending printed copies of the guidance to all monitoring officers and parish clerks soon.

Adopting and amending the new Code of Conduct

The new Code of Conduct applies to the same range of authorities covered by the existing Code. However, only one composite Code has been made for different types of authorities. As a result, some paragraphs are not mandatory for your authority, and particular wording within mandatory paragraphs may not be relevant to your authority. For example, some paragraphs refer specifically to executive arrangements and overview and scrutiny which parishes do not have, while other paragraphs expressly apply only to the Greater London Authority or Metropolitan Police Authority.

Councils may adopt a version of the Model Code that excludes non-mandatory provisions or wording that is not relevant to the particular authority, so long as it is consistent with the application of the mandatory provisions to that relevant authority. To avoid confusion and ensure consistency, we recommend that any amendments do not affect the subsequent numbering of paragraphs. To assist parish and town councils, we have prepared a Model Code of Conduct for Parish and Town Councils' which is available from our website.

If your authority simply adopts the Model Code, this means that it does not adopt the non-mandatory paragraphs for that authority. For example, paragraph 12(2) is not mandatory for parish and town councils, English and Welsh police authorities, the Greater London Authority, national park authorities, and fire and rescue authorities. Therefore, if these types of authorities wish to adopt paragraph 12(2), they will need to do so expressly. See also the article on page 4 *Special advice for parish and town councils adopting the new Code of Conduct*.

Advertising the new Model Code

As soon as your authority has adopted a revised Code of Conduct, it must send notification to the Standards Board and make copies available for inspection by the public. It must also publish a notice in a local newspaper, stating that the council has adopted a revised Code. The authority can also publish the notice in its own newspaper, if it has one, but this cannot be the only notice that is published.

This duty to publish a notice will again be relevant when the Model Code comes into effect. When the previous Code was introduced, some unitary and district councils organised combined notices for councils in their area. This can save money, especially where there are a large number of parish councils.

To enable a monitoring officer to coordinate a combined notice, parish clerks will need to ensure their councils adopt the revised Code quickly and confirm to the monitoring officer where copies of the Code can be inspected within the parish. This information can then be fed into the notice published in the newspaper.

If you are a local authority, the easiest way to notify the Standards Board of your adoption of the Code is to send an email to Kimberley Connell in our Policy and Guidance team at enquiries@standardsboard.gov.uk.

Special advice for parish and town councils adopting the new Code of Conduct

Parish and town councils can maximise their ability to exercise democratic rights under the new Code of Conduct by taking certain actions.

A new paragraph 12(2) gives elected members with a prejudicial interest the same rights as members of the public to speak at a meeting on the issue, but then leave before the main discussion and vote. This part of the revised Code does not automatically apply to parish and town councils.

It is not enough, therefore, for parishes to simply adopt the Model Code “as applicable to parish councils” - paragraph 12(2) is not mandatory for parishes. In order to take advantage of the amendment, parish councils will need to pass a resolution adopting the Model Code of Conduct including paragraph 12 (2).

Each parish and town council wanting to take advantage of this provision should notify the Standards Board of the resolution passed and the date on which it was passed. This information can be sent electronically to Kimberley Connell in our Policy and Guidance team at enquiries@standardsboard.gov.uk.

We recommend: “to adopt the Model Code of Conduct for Members including paragraph 12 (2), effective (insert ‘immediately’ or ‘specific date’”).

The Standards Board also recommends that parishes should consider having standing orders in place to allow members of the public to attend meetings of the authority for the purpose of making representations, giving evidence or answering questions.

The revised Code gives councillors the same rights to speak as members of the public, but if an authority’s standing orders or procedural rules do not provide members of the public with these rights, or if an authority has no standing orders in place at all, paragraph 12(2) will have no effect.

This means that councillors with a prejudicial interest would have to leave a meeting after declaring the nature and extent of their interest, just as they have had to under the old Code of Conduct. They will not be able to take advantage of the freedom offered by the new Code to allow members with a prejudicial interest to speak in certain circumstances.

The Standards Board has prepared a ‘Model Code for Parish and Town Councils’ which is available from our website. It has been created to assist parish and town councils in adopting the relevant mandatory paragraphs and the ‘voluntary’ paragraph 12(2), while excluding paragraphs that are not relevant to parishes.

We urge monitoring officers to bring the above information to the attention of parish clerks.