

## SUMMARY EXPLANATION OF THE PROVISIONS OF THE NEW CODE

### 1.0 SCOPE - Paragraph 2

- 1.1 The new Code is addressed to “you”, the local authority member, which the Government considers is a more direct and effective expression of the Code’s provisions, in addition to being gender-neutral.
- 1.2 The Government also decided against reproducing the General Principles of Local Government Conduct as a preamble to the Code, but instead **paragraph 1(2)** draws attention to them. However, for a better understanding, and to assist the public and Members, the proposed Model refers to these in an **Annex to the Code**
- 1.3 The Code applies whenever a member acts in an official capacity. This includes not only conducting the business of the Council or the office to which the member has been appointed; it also includes occasions when the member acts as a representative of the Council or purports to do so.
- 1.4 The Code also regulates certain behaviour outside official duties. Conduct that constitutes a criminal offence leading to conviction, (including offences committed before taking office but in respect of which the member was convicted after election), is brought within the scope of the Code, whether the member is acting within an official capacity or not.
- 1.5 This could apply in three situations:
  - Where the member is guilty of intimidating (or attempting to intimidate) someone involved in a complaint made against him/her;
  - Where the member has conducted themselves in a manner reasonably regarded as bringing their office or authority into disrepute; and
  - Where the member uses (or attempts to use) their position to improperly secure for himself or herself or for anyone else an advantage or disadvantage.
- 1.6 An altercation between the Mayor of London and a journalist last year led to a complaint and a subsequent court decision that cast doubt on the ability of the Code to proscribe behaviour of members in their private capacity. This caused the Government to introduce amending legislation to make it clear that the principles of conduct are not limited to behaviour whilst acting in an official capacity

## **2.0 GENERAL OBLIGATIONS – Paragraphs 3 to 7 inclusive**

2.1 The new Code has adjusted the existing mix of positive and negative obligations, and introduced some new provisions. A member must: -

- Treat others with respect
- Not do anything to cause the Council to breach equality enactments
- Not bully any person
- Not intimidate any complainant, witness or other person involved in a complaint against the member
- Not do anything which compromises the impartiality of those who work for or on behalf of the Council
- Not disclose confidential information (with exceptions)
- Not bring their office or the Council into disrepute
- Not improperly use their position to gain an advantage or disadvantage for themselves or any other person
- Use the Council's resources in accordance with the Council's reasonable requirements and not for political purposes
- Have regard to the Publicity Code
- Have regard to the advice of the statutory officers
- Give reasons for decisions in accordance with statutory and local requirements

2.2 The prohibition on bullying is new and intended to send out a clear message that such behaviour is unacceptable. Bullying is not defined but will be the subject of Standards Board guidance.

2.3 The prohibition on disclosing confidential information remains but is harmonised with Freedom of Information provisions. Disclosure is permissible if reasonable, done in the public interest and in good faith, and in compliance with the Council's reasonable requirements, including advice from the Monitoring Officer.

2.4 The old obligation to promote equality by not discriminating unlawfully against any person is replaced with a provision proscribing members from doing anything that would cause the Council to breach equality laws. This is a technical adjustment. It arises from a finding by the Adjudication Panel that it has no jurisdiction to make determinations as to what is, and what is not, unlawful discrimination.

2.5 The Code already provided that a member must not use their position improperly to confer or secure for himself or herself, or for anyone else, an advantage or disadvantage. The words 'or attempts to use' their position in that way is now added to make it clear that the provision is breached whether or not the attempt is successful.

- 2.6 Members should not use local authority resources for political purposes. The Government has now complemented this provision with the added requirement to have regard to the Code of Recommended Practice on Local Authority Publicity (this provides, amongst other things, instructions about content, style and distribution of promotional material).
- 2.7 The obligation on members to report other members' breaches of the Code was perceived by some as encouraging councillors to make trivial allegations, and this obligation has been removed. To protect persons who do report serious misconduct, a new provision prohibits a member from intimidating or attempting to intimidate a complainant or witness or other people involved in the investigation.
- 2.8 During the consultation Members felt strongly that this should be retained. However, it was not included in the model. It is therefore not considered to be consistent with the mandatory conditions and cannot be included. It has therefore been recommended that the Monitoring Officer bring a further report to the Committee to consider the introduction of a local rule instead.

### **3.0 PERSONAL INTERESTS - Paragraphs 8 & 9**

- 3.1 It is in the area of members' interests that the published Code has seen most changes from the draft issued on 22 January 2007. Paragraph 8 places personal interests into two broad categories. **Paragraph 8(1)(a)** lists all the interests that will also have to be entered in the register of interests. These include:
- The member's business or employment,
  - Property ownership in the area,
  - The details of any person who has made payments in respect of the member's election,
  - Receipt of gifts and hospitality (this is new: see below),
  - Contracts with the Council, membership of public/charitable bodies and bodies "influencing public opinion or policy" (note here that this is expressly deemed to include political parties and trade unions).
  - Council business, which touches any of these interests, will need to be declared at a meeting.
- 3.2 The other broad category of personal interest is one affecting the member's "well-being or financial position" (or the well-being or financial position of a "relevant person" - see below) to a greater extent than the majority of council tax payers or inhabitants of the **ward affected by the decision (paragraph 8(1)(b))**.

- 3.3 The current Code provides that members has a personal interests if they would be affected by a matter to a greater extent than other council tax payers or inhabitants of the authority's **whole area**. The test now refers to an interest greater than the majority of the inhabitants **of the ward** affected by the matter.
- 3.4 This narrows the focus of the interest and allows greater participation by members in local ward issues where interests are shared by substantial numbers of people.
- 3.5 This second category of personal interest also captures decisions that affect the well-being or financial position of "relevant persons". A relevant person is a family member but also (and this is new) a person with whom the member has a close association.
- 3.6 This seeks to ensure that the definition embraces a range of individuals who may be personal, business or professional associates. A relevant person is also anyone who employs the member, a firm or company in which they are a partner or director, bodies in which the member has a financial stake (securities exceeding nominal value of £25,000) and those public bodies in which the member has an interest under the preceding category.

#### **4.0 DISCLOSURE OF PERSONAL INTERESTS - Paragraph 9**

- 4.1 The basic rule on disclosure remains the same. A personal interest in the business of the Council (as defined above) should be disclosed to any meeting where the member is present and where that business is considered (**paragraph 9(1)**). The member should disclose the existence and nature of the interest at the commencement of the consideration or as soon as the interest becomes apparent.
- 4.2 One new relaxation occurs when an interest arises because of the member's involvement with a body as a Council appointee or as a member of a body "exercising functions of a public nature" (e.g. another local authority). The interest need now only be declared at a meeting if the member proposes to speak on a related issue. The purpose is to avoid the tedium of mass declarations of interest where members have no intention of taking part in the debate.
- 4.3 It was possible under the previous Code for a member to be technically in breach where a matter touched, say, a relative's interest of which the member was unaware. The Code now provides that declaration is only necessary if the member is aware or ought reasonably to be aware of the existence of a personal interest (**paragraph 9(5)**).

## 5.0 PREJUDICIAL INTERESTS – Paragraphs 10 to 12 inclusive

- 5.1 The test of what is and what is not “prejudicial” has always been important because it determines whether a member is able to participate in discussion or must leave the room.
- 5.2 The basic test remains the same: a prejudicial 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 the member’s judgement of the public interest.
- 5.3 The Code already listed situations where a member was not to be regarded as having a prejudicial interest in a matter (e.g. discussions on rent levels, where the member is also a Council tenant). These “exemptions” have been further extended to cover three situations, which have troubled some authorities. Members will not have prejudicial interests in discussions on-
- Member indemnities (affecting themselves or a number of members)
  - Setting of Council Tax (e.g. where the member might have a connection with an organisation funded from a budget set by the Council Tax settlement)
  - Whether the member should receive a ceremonial honour (e.g. become a Freeman of the Borough)
- 5.4 However, there was a general consensus that the prejudicial test proved too restrictive in practice. The Government agreed that the rules were working to the detriment of the community advocate role, with councillors excluded from participation on too many occasions.
- 5.5 The Government had proposed to relax the prejudicial rule in two particular respects. One approach, now abandoned, was to define a new class of “public sector interest” and allow general participation in relation to these matters. This has disappeared from the Code, replaced it appears by a more sweeping exemption.
- 5.6 **Paragraph 10(2)(a)** now provides that a prejudicial interest does not arise if the business does not affect the financial position of the member or the financial position of a relevant connected person or body (i.e. the bodies required to be registered and the relevant persons defined in **paragraph 8**).
- 5.7 This provision should be read in the context of the Code as a whole and, more particularly, will not override the requirements of the general law: the common law rule precluding bias in decision-making will still apply. Nevertheless, this is on its face a significant change.

- 5.8 The other significant reform is to allow limited participation for the purposes of-
- “Making representations, answering questions or giving evidence”  
**(paragraph 12(2))**
- 5.9 Previously the Government had proposed that participation for this purpose would not count as a prejudicial interest at all. Now it does rank as a prejudicial interest but on the premise that the member will have the same rights as would apply to members of the public under the same circumstances.
- 5.10 Accordingly, a member with a prejudicial interest in, say, a planning application will be able to address the Planning Committee on the matter but only if the public would be allowed to do so. In addition after making representations, and unlike any other member of the public, the Member must then withdraw from the meeting and will not be entitled to listen to the debate nor vote on the issue (applying **paragraph 12(1)(a)** of the Code.
- 5.11 This will require the Chairman to call the Member to comment at the outset and it seeks to balance the rights of the Member to address the Committee, with the need to ensure they do not in any other way seek to influence the Committee.
- 5.12 Prejudicial interests arising in relation to Overview and Scrutiny are clarified. A member will have a prejudicial interest in O & S business if the matter relates to an Executive or other committee decision, where the member was a member of that body at the time and present when the decision was made (**paragraph 11**).
- 5.13 The member will still be permitted to attend the O & S Committee for the purpose of making representations under the aforementioned paragraph 12(2), before withdrawing and leaving the Committee to its decision.

## **6.0 REGISTRATION OF INTERESTS - Paragraphs 13 & 14**

- 6.1 The requirement to register interests within the categories mentioned in **paragraph 8(1)(a)** of the Code is subject, as now, to a time limit. The member must provide details on the written form within 28 days of the Code being adopted (or the member’s election or appointment to office where that is later).
- 6.2 Any changes to registered interests must be registered within 28 days of the member becoming aware of the change.
- 6.3 The Government was concerned to ensure that sensitive information (such as where a member is employed in scientific research) should not be made public if it would threaten the safety of the member or his/her family.

- 6.4 It is now provided that a member who considers their personal information to be sensitive will apply to the Monitoring Officer for the interest not to be registered.
- 6.5 If the risk of intimidation or harm is real, the information will not be registered. Under **paragraph 9(5)** the member must disclose to a meeting the existence of a personal interest arising under this connection but not the sensitive information itself.

## **7.0 GIFTS - Paragraphs 8, 9 and 13**

- 7.1 The Code of Conduct always provided for the declaration to the Monitoring Officer of gifts and hospitality (to a value of £25 or more) received by members in their official capacity.
- 7.2 The difference now is that such gifts and hospitality are defined as personal interests (**paragraph 8(1)(a)(vii)**). As such they must be disclosed and will appear in the public register of interests (**paragraph 13(1)**).
- 7.3 There is no historic time frame provided for the purposes of entering these gifts in the register, but gifts and hospitality registered as interests more than three years previously need not be disclosed to a meeting (**paragraph 9(3)**).