

Agenda

Councillors: Worcestershire: Mr RJ Farmer, Mr J R Webb.

Independent Members: Mr C Emeny, Mr R Gething, Dr M Mylechreest,
Mr R Rogers, Mr D Stevens.

1. Named Substitutes (if any)

To receive details of any Member of the Authority nominated to attend the meeting in place of either of the two Councillors on the Committee.

2. Election of Chairman

To elect a Chairman.

3. Appointment of Vice-Chairman

To appoint a Vice-Chairman.

4. Declaration of Interests (if any)

To invite any Member of the Committee to declare any interest in any of the items on this Agenda.

5. Minutes

To confirm the Minutes of the meeting held on 2nd March, 2007. (copy attached – pink pages)

6. Model Code of Conduct (P.1-5)

To consider the new Model Code of Conduct made on the 4th April 2007 which came into force on 3rd May 2007.

6. NEW MODEL CODE OF CONDUCT

Purpose of Report

1. This report asks Members to consider the new Model Code of Conduct made on 4 April 2007, which came into force on 3 May 2007.
2. The report seeks Members' views in relation to the adoption of the Code of Conduct by the Authority.
3. The Report seeks the recommendation by Members of the Standards Committee of the Fire and Rescue Authority to adopt the new Model Code of Conduct.

Financial Implications

4. There are resource and financial implications in ensuring that the requirements to publicise the adoption of the new Model Code of Conduct are met, and in training for Members of the Authority. Copies of the new Model Code of Conduct as adopted are to be made available for inspection, and a copy of the Code that each Authority approves will be sent to the Standards Board for England.

Background

5. It is a function of the Standards Committee to advise the Authority on the adoption or review of the Members' Code of Conduct. On 4 April 2007 the Local Authorities (Model Code of Conduct) Order 2007 was laid before Parliament and came into force on 3 May 2007. Local Authorities (including the Fire and Rescue Authority) are required to adopt the Code within six months of its being made or the mandatory provisions of the Code will be imposed upon them. It is therefore necessary that the Authority adopts a new Code of Conduct reflecting the provisions in the Model Code by 1 October 2007. The Standards Board for England recommend that the new Code of Conduct be adopted in its model form without amendment. It also recommends a preamble to the Code, which outlines the ten general principles governing the conduct of Members of local authorities.
6. Section 50 of the Local Government Act 2000 ("the Act") sets out the Secretary of State's power to issue a Model Code of Conduct that such a model code may contain provisions which are mandatory and provisions, which are optional. Section 151 (4) of the Act provides that local authorities must adopt a Code, which incorporates any mandatory provisions and may include other provisions, which are consistent with that Model Code.
7. All of the provisions set out in the Model Code are mandatory for the Authority, with the exception of 6(c).
8. It is proposed that the adoption of the Code be put to the Authority. A copy of the mandatory provisions of the Model Code is attached as Appendix 1.
9. A Member training seminar will be arranged for Members in due course.

Issues

Summary of the Changes in the Code

Preamble

10. The ten principles derive from seven principles of public life recommended by the Nolan Committee. They set out the basis of the obligations contained within the Code and may be a helpful summary of the ethical framework within which Members should act.
11. Compliance with the principles is not of itself a statutory obligation but a failure to act in accordance with the principles could result in a breach of the Code as constituting, for example, conduct which could bring a Member's office or authority into disrepute.
12. 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 perceived.

Scope

13. The Code is intended to apply when a Member is acting in an official capacity. Although not well phrased 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 a criminal conviction has been imposed as a result of it. The three instances set out in the 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 two instances were also included within the previous Code.
14. Until the proposed amendments to section 52 of the Act, 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.
15. The Code as drafted provides that any criminal conviction must be of a serious nature (i.e. an imprisonable offence) in order to be taken into account in determining if a Member is bringing the authority into disrepute. There may be local variations of interpretation on the weight to be given to various criminal convictions when local filtering is introduced. It appears that the Code will have no application where there is no conviction as, for example, where a caution is received for a violent crime.

General Obligations

16. The positive obligation to treat others with respect remains (paragraph 3.1). Rather than being required to promote equality as under the existing Code, however, the new Code requires Members not to do anything that may cause the Authority to breach any of the equality enactments (paragraph 3.a). A new requirement not to bully any person has been inserted (paragraph 5.2.b).
17. 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).

18. The obligation to have regard to any relevant advice given by the Clerk and Chief Finance Officer has been retained (paragraph 7. (1)).
19. The new bullying provision is likely to be the subject of further Guidance from the Standards Board, which will stress that offensive, intimidating or insulting behaviour is likely to constitute a breach of the new Code. This should be contrasted with legitimate challenges to fellow members or officers as to why they hold their views or have given particular advice. Personal criticism or attack however is likely to be seen as unacceptable behaviour.
20. Further guidance is to be issued by the Standards Board on the new confidentiality provisions as to the nature of a “public interest” test that should be satisfied before disclosure together with an emphasis on the need to raise concern through the proper channels before such disclosure takes place. It is recommended that Members be advised to contact the Clerk for advice before they release any confidential information and have regard to such advice. As was noted in its comments on the draft Code, it would be undesirable for this provision to provide cover for deliberate leaks.

Declarations of Interests – Personal Interests

21. The new list of personal interests required to be registered (paragraph 8.1 a) is similar to the current list. However, there has been added a new personal interest: namely where it relates to or is likely to affect the interests of any person who is in receipt of at least £25 worth of gift or hospitality (paragraph 8 1 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.
22. 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, rate payers or inhabitants of the ward affected by the decision.
23. The list of “relevant people” including 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 he or she is aware or might reasonably be aware of its existence.
24. Personal interests (paragraph 8.1.a) should be registered in the Register of Members’ Interests, which is maintained by the Clerk, and changes notified within 28 days, as now (paragraph 13). 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).
25. If the personal interest relates to a body to which a Member has been nominated or appointed by the Authority, or relates to a body exercising functions of a public nature, then 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).

26. There are detailed provisions with regard to the disclosure of a particular interest; Members will need to acquaint themselves with these in the event that any apply to their own circumstances. "Sensitive information" which could create a serious risk of violence or intimidation need not be disclosed (paragraph 9.5) or registered (paragraph 14) provided the Clerk agrees.
27. The new Code has removed the reference to "friend" and uses a wider term covering a person with whom a Member has a "close association". The term "family" is no longer defined.

Prejudicial Interests

28. The basic test remains the same; 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 the knowledge of all the relevant facts, would reasonably regard it as so significant that it is likely to prejudice a Member's judgement of the public interest (paragraph 10.1).
29. The new Code adds (paragraph 10.2) that a Member does not have a prejudicial interest where:
 - the matter under discussion does not affect the financial position of a 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 has a personal interest;
 - the matter relates to specific exceptions such as travel expenses; statutory sick pay; members' allowances payments or indemnities; or ceremonies honours; or tax.

The exceptions do need to be carefully studied as a number of them are different from the current position and Members need to ensure they are familiar with them.

Effect of Prejudicial Interests on Participation

30. The new Code permits a Member with a prejudicial interest to 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 immediately withdraw from the room or chamber and not participate further nor take part during any debate, vote or recommendation made by the Authority.
31. The Member will have the same right as a member of the public to address the meeting even if that Member has a prejudicial interest. This will allow Members who belong to special interest groups or who were elected on a particular issues to make representations at a meeting open to the public.

32. The new Code does not address the issue of “bias” or “predetermination”; Members will need to answer separately from the Code 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.
33. There are however, in practice no areas of the Authority’s business where members of the public speak.

Summary

34. There are a number of significant changes from the current Code. The 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.

Risk Management

35. Not to adopt the new Code will mean that the new Code will apply in any event by default.
36. All Members will be encouraged to attend appropriate training sessions on the new Code which are likely to take place before the end of the year.

Recommendation

THAT **The Authority be recommended to adopt the Model Code of Conduct as set out in the Local Authorities (Model Code of Conduct) Order 2007 (“the Code”) (Appendix 1) together with a preamble incorporating the ten principles governing the conduct of Members, in place of its existing Code.**

Background Papers

None

PREAMBLE TO THE MEMBERS' CODE OF CONDUCT

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.

(Relevant Authorities (General Principles) Order 2001 (S.I.2001/1401))

MEMBERS' CODE OF CONDUCT

Part 1

General Provisions

1. Introduction and interpretation

- (1) This Code applies to **you** as a member of this authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State and attached as a preamble to this Code.
- (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

2. Scope

- (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

3. General Obligations

- (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 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.

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 officerwhere 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 our 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 had 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 a 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 wellbeing or financial position or the wellbeing or financial position of a relevant person to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the electoral division or ward, as they case may be, affected by the decision.

(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).

9. Disclosure of personal interests

- (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 of 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' interest, 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 regulation 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 your 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

11. Prejudicial interests arising in relation to overview and scrutiny committees

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

- (a) that business relates to a decision (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.

12. Effect of prejudicial interests on participation

(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 become 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 rights 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.