



Full Council
10th September 2007

Report from the Borough Solicitor

Wards Affected:
None

New Model Code of Conduct

1.0 Summary

- 1.1 The Government recently published a new Model Code of Conduct for Members of local authorities. This report discusses the changes introduced by the new Code and the steps that must be taken by the Council to adopt the new Code. The new Code was considered by the Standards Committee on 4 July 2007 and was recommended for approval.

2.0 Recommendations

- 2.1 Note that the Standards Committee considered the new Code of Conduct on 4 July 2007 and recommended it to the Council for approval.
- 2.2 Adopt the new Code of Conduct attached to this report as **Appendix 1**.
- 2.3 Note that all members have to register their personal interests as defined by the new Code within 28 days of the Council adopting the new Code and will be asked to sign an undertaking to agree to be bound by the new Code.

3.0 Detail

Background

- 3.1 The new Model Code of Conduct issued by the Government is part of a wider programme of change in the area of local authority ethics. The Local Government and Public involvement in Health Bill will change the way allegations of misconduct are treated but that Bill has yet to be passed by

Parliament. This report therefore only deals with the changes to, and adoption of, the Code of Conduct as it currently stands.

3.2 A copy of the new Code is attached to this paper as **Appendix 1** and the current Brent Members Code of Conduct at **Appendix 2**. Members are asked to adopt the new Code.

3.3 The Standards Committee considered the Model Code of Conduct at their meeting on 4 July 2007 and recommended that the Council adopt the Code. The Code that members are recommended to adopt attached to this paper as **Appendix 1** differs slightly from that which the Standards committee considered and recommended adopting in that, the parts of the Model Code that do not relate to London Boroughs have now been removed as they are unnecessary. Members who are also members of other authorities will also be bound by that authority's own Code of Conduct.

The 10 general principles

3.4 The new Code must now be read together with the ten general principles, set out in the Relevant Authorities (General Principles) Order 2001. This was already incorporated into the Brent code and so there is no change here. To remind members, the 10 General Principles are:

- selflessness
- honesty and integrity
- objectivity
- accountability
- openness
- personal judgement
- respect for others
- duty to uphold the law
- stewardship
- leadership

Treating Others With respect

3.5 The new Code, like the old one, will require members to treat others with respect. However, there are new specific requirements not to:

- do anything which may cause the authority to breach any of the equality enactments i.e. those enactments relating to age, sex, gender, ethnicity, etc.
- bully any person (this is not defined but is to be the subject of future guidance from the SBE)
- intimidate or attempt to intimidate any person who is or is likely to be a complainant in relation to an allegation of misconduct or someone who

is likely to be a witness or be involved in the investigation or administration of such an allegation.

- do anything which compromises or is likely to compromise the impartiality of those who work for or on behalf of the authority.

3.6 It is considered that all of the above types of behaviour would have been covered by the old code in any event but these changes make it explicit in the new code that those types of behaviour will now constitute a breach of the Code.

Prohibition on Disclosing Confidential Information

3.7 The new code, like the old one, prevents members from disclosing confidential information. However, the government felt it was necessary to make changes to the provisions dealing with disclosure of confidential information following an Adjudication Panel decision in 2005 which found that the Code did not properly take account of Article 10(1) of the European Convention on Human Rights. Therefore there is now a defence which could allow a member to disclose information provided to them in confidence but only where disclosure is in the public interest, made in good faith and made in compliance with any reasonable requirements of the Council. Members should exercise caution in any case where they reasonably believe that this defence might be available to them and should seek advice from the Borough Solicitor before disclosing the information to any other person.

Whistleblowing

3.8 The duty to report other members to the Standards Board for England for any failure to comply with the Code has been removed. Members are no longer required to report other members although they may do so if they wish provided of course that their allegation is genuine and not frivolous.

Personal Interests

3.9 Members are still required to register their personal interests but the definition of what constitutes a personal interest has changed slightly. For example, the interests of close associates are now brought into the definition of personal interests. Members will therefore be asked to consider the new definition of personal interest and re-register the interests that are now required to be registered. A Monitoring Officer Advice Note will be issued giving detailed advice on the interests that must now be registered and explaining the procedure for the re-registration of personal interests.

3.10 Members should be aware of the exemption which enables sensitive information to be excluded from the register of members' interests. Sensitive information is 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.

- 3.11 The most significant change to the rules relating to personal interests is that it is no longer necessary for members to regard themselves as having a personal interest in a matter if the proposed decision affecting their interest would affect them no more than the majority of the other Council Tax payers in their ward. This means that where the interest is a local ward issue then, provided the member has no greater interest than the rest of the residents in his ward, he will not be regarded as having a personal interest. This means that there is now much more scope for members to represent their ward on local issues. Members are, however, reminded that the rules on bias still exist and involvement in a decision in a way which breached the rules on bias could taint the decision and render it liable to challenge.
- 3.12 Members must continue to register gifts and hospitality worth over £25 but the interests of the individual or group who gave the gift or hospitality will now be regarded as a personal interest of the member and must be registered and treated as such.
- 3.13 Where a member's personal interest arises because he is a member of or in a position of general control or management of a body to which he was appointed or nominated by the Council or which exercises functions of a public nature then the member is now only required to declare the interest at a meeting if he actually addresses the meeting on the item of business affecting that body. Therefore, in these limited cases, if a member chooses not to address the meeting he is not required to declare the interest at the meeting.

Prejudicial Interests

- 3.14 A member will continue to have a prejudicial interest in an item of business if that business relates to a personal interest and if the personal interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it would be likely to prejudice the member's judgement of the public interest. However, there are some important new exceptions to this. For example, a member will not now be regarded as having a prejudicial interest in an item of business if the business:
- does not affect the member's financial position, or the financial position of a relevant person or body in which they have an interest; or
 - does not relate to determining any consent, approval, licence, permission or registration for the member or a relevant person or body; or
 - relates to a payment or indemnity given to a member or any ceremonial honour given to members.

- 3.15 The current exceptions relating to housing, school meals and transport, sick pay, and allowances remain.
- 3.16 Under the old code a member with a prejudicial interest would have to withdraw from a meeting as soon as it became apparent that he had a prejudicial interest. The member would not be able to address the meeting or answer questions. As soon as they made their declaration they would have to leave the meeting or simply not attend in the first place. Now, a member with a prejudicial interest may attend a meeting to answer questions, give evidence or make representations provided that the public are also allowed to attend the meeting for the same purpose. Once they have answered questions or given evidence or made representations they must leave the room. This is a significant difference and means that a member could make representations on, say, a planning application in which he had a personal interest although there would still be an absolute prohibition on taking any decision on the matter.
- 3.17 A member of an Overview and Scrutiny Committee now only has a prejudicial interest in a matter previously considered by the executive or a committee, sub-committee, joint committee or joint sub-committee if the member was a member of the Executive or committee or sub-committee that made the decision and if he was actually present when that decision was made.

Application of the Code to Private Life – the effect of the Livingstone Judgement

- 3.18 Members will be aware of the judgements in the Livingstone cases which cast some doubt over the ability of the current code to proscribe the behaviour of members in their private lives. The court held that the code can only govern conduct in private life if there is a sufficient nexus or link between the conduct and the member's. The new Code reflects this in that the new Code only applies to conduct in an official capacity i.e. whenever a member conducts the business of the authority or the business of the office he holds or when he acts, claims or gives the impression that he is acting as a representative of the authority. The exception to this is that certain parts of the code apply at all times where the conduct constitutes a criminal offence for which the member has been convicted, namely those parts of the code which require members not to intimidate people involved in an investigation, not to bring the member's office or authority into disrepute and not to use the member's position to improperly confer or secure for himself or another person an advantage or disadvantage.
- 3.19 However until the Local Government and Public Involvement in Health Bill becomes law it is unlikely that this part of the Code would be held to have any affect because of the Livingstone judgment. The Local Government and Public Involvement in Health Bill will amend section 52 of the Local Government Act 2000 allowing the Code of Conduct to apply to a member at all times and not just when performing their official functions as is the case

now. The Bill is currently before the House of Lords and is expected to be passed in the autumn.

Transitional arrangements and consequential changes

- 3.20 Any existing allegations of misconduct will continue to be judged in accordance with the old Code and Members will have been bound by the terms of the old Code until the new Code is adopted.
- 3.21 The new Model Code of Conduct requires members, within 28 days of adopting the new code to register all personal interests to which the new code applies. There are no transitional provisions that would transfer interests registered under the old Code to interests under the new Code.
- 3.22 Changing the Code of Conduct affects other Codes of practice, in particular the Planning Code of Practice and the Licensing Code of Practice. A further report will be submitted to the Standards Committee recommending changes to the Planning Code of Practice and the Licensing Code of Practice. The Council will then be asked to adopt these changes at the next Council meeting on 29 October 2007.

Training on the new Code

- 3.23 The Borough Solicitor has offered training sessions to each political group to explain the changes introduced by the new Code. A series of Monitoring Officer Advice Notes is also being issued which deal with different aspects of the new Code. If members are unclear about the effect of any parts of the new Code they should seek advice from the Borough Solicitor. Further training is being organised

4.0 Financial Implications

- 4.1 There are no financial implications arising out of the introduction of the new Code.
- 4.2 The enhanced role for the Monitoring Officer and Standards Committee arising out of the Local Government and Public Involvement in Health Bill is likely to have resource implications for the Council but the extent of this is not known at the current time.

5.0 Legal Implications

- 5.1 The Order containing the new Model Code of Conduct was made on 2 April 2007 and came into force on 3 May 2007.
- 5.2 Every local authority must adopt the new Model Code of Conduct (with or without local additions) by resolution of the Council within six months of the

date on which the Order was made. The new Model Code of Conduct must therefore be adopted by the Council on or before 1 October 2007.

- 5.3 Where an authority fails to adopt the new Code by that date, the mandatory provisions of the new Code apply automatically, until the authority adopts the new Code.
- 5.4 Once the Council has adopted the new Code, it must ensure that copies of the new Code are available for inspection at the council's offices and publish notice of the adoption of the new Code in any newspaper which they publish and in a local newspaper. It must also send a copy of the adopted Code to the Standards Board for England.
- 5.5 The Local Government Act 2000 allows a Council to include other provisions in the Code that a Council adopts provided that they are consistent with the Model Code of Conduct. None are recommended.
- 5.6 It is not strictly necessary to have members provide a further written undertaking to observe the new Code of Conduct. However, the Standards Committee on 4 July 2007 agreed with officers that it would be prudent to require a new undertaking as it will create a formal link between each member and the new Code. Accordingly members will be asked to provide a written undertaking once the Code is adopted.

6.0 Diversity Implications

- 6.1 The current Code of Conduct requires all members to promote equality by not discriminating unlawfully against any person and to treat others with respect (paragraph 2(a)). However, an Adjudication Panel finding in January 2005 concluded that it had no jurisdiction to make findings of unlawful discrimination and it was therefore necessary to remove this provision from the Code. It is replaced with a provision proscribing members from doing anything which would cause the authority to breach the equality enactments i.e those relating to age, gender, sex, ethnicity, etc. The requirement to treat others with respect remains. The government felt that this change would allow the Code of Conduct to continue to support the principles of fair treatment and respect for others, including behaviour and actions which could relate to equality issues.

7.0 Staffing Implications

- 7.1 The changes proposed by the Local Government and Public Involvement in Health Bill will have an impact on the role and work of the Monitoring Officer and her staff because the Monitoring Officer may appoint another person to undertake an investigation, and this may be from within or outside the authority.

Background Papers

Local Government Act 2000

Should any person require any further information about the issues addressed in this report, please contact Terry Osborne, Borough Solicitor on telephone number 020 8937 1292.

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