

LONDON BOROUGH OF BRENT**Meeting of the Standards Committee
11 January 2005****Report from Borough Solicitor**

For action

Wards affected:
All**Report Title: General Principles In Code of Conduct****1.0 SUMMARY**

- 1.1 This report provides clarification on an issue raised at standards training for Members on 10 November 2004 regarding the 10 General Principles within the Brent Code of Conduct ("the Code"). A copy of the Code is attached at Appendix 1.
- 1.2 At the standards training held on 10 November 2004 there was some uncertainty expressed by members as to whether the 10 General Principles of Conduct set out in the Code applied to members in the same way as the other rules of conduct contained in it and would a breach of any of those 10 General Principles be treated in the same way as a breach of those other rules. The 10 General Principles are drawn more widely than the rest of the Code so it may be easier to find a breach. Councillors completing a scenario sought guidance on which part to rely on in finding a breach or otherwise. This identified a need to clarify the wording of the section on the 10 principles in the Constitution.

2.0 RECOMMENDATIONS

- 2.1 That members refer this report to Full Council with a recommendation that for the sake of clarity the wording of clause 18 (part 7 page 6) (attached in Appendix 1) be amended such that paragraph 18 will then read:

18. 'A member must have regard to the 10 General Principles of Conduct (as set out below) which are to govern the conduct of Members when acting in an official capacity or when acting in any way which is connected to or relates to the Council. In addition a member's conduct must be governed by principles 2 and 8 at all times.

3.0 DETAIL

The Statutory Instruments

- 3.1 The 'Local Authorities (Model Code of Conduct) (England) Order 2001 contains a model code of conduct for authorities operating executive arrangements.
- 3.2 The Relevant Authorities (General Principles) Order 2001 contains 10 principles of conduct.
- 3.3 The Council was required to adopt a member code of conduct which incorporated all of the mandatory provisions of the Model Code of Conduct. The Brent Code also includes currently an additional explicit requirement to adhere to the 10 General Principles of Conduct. The code was adopted by Brent Council in May 2001 into Part 7 of its Constitution as the Brent Members Code of Conduct (the "Brent Code")

Brent Members Code of Conduct

- 3.4 Part 1 of the Brent Code states that '*This code of conduct incorporates the whole of the model code of conduct for authorities operating executive arrangements set out in statutory instrument 2001/3575. It also sets out the ten principles which are to govern the conduct of members and which principles all members are required to adhere to.*' (author's emphasis).

- 3.5 Part 4 of the Brent Code sets out the 10 general principles of conduct and provides at paragraph 18 that:

18. a member must adhere to the following ten principles of conduct when acting in an official capacity or when acting in any way which is connected to or relates to the council. In addition a member must adhere to principles 2 and 8 at all times. (author's emphasis).

- 3.3 It is considered that use of the word 'adhere' may have given to the 10 principles an unintended role which is difficult to manage in practice. The principles are of a general nature making it difficult to be certain of their ambit. This is unhelpful as members need to be able to be clear as to what conduct is a breach of the Code, both in order to regulate their own conduct and in order to comply with their duty to report breaches by other members of which they are aware. It is therefore recommended that the words 'adhere to' be replaced with words that better reflect the intent of the principles as 'guiding' Members.

- 3.4 The General Principles Order 2001 referred to above which contains the 10 principles of conduct states that these principles are 'to *govern the conduct* of members of relevant authorities'. It is recommended that the word 'adhere' be replaced in keeping with the words of the statute to clearly reflect the intent of the Order and that paragraph 18 will then read:

18. 'A member must have regard to the 10 General Principles of Conduct (as set out below) which are to govern the conduct of Members when acting in an official capacity or when acting in any way

which is connected to or relates to the Council. In addition a member's conduct must be governed by principles 2 and 8 at all times.'

A similar change is also required at the top of the first page of the Code (Part 7 page 1) which currently refers to the ten principles which 'all members are required to adhere to'.

4.0 FINANCIAL IMPLICATIONS

4.1 There are no direct financial implications arising from this report.

5.0 STAFFING IMPLICATIONS

5.1 There are no direct staffing implications arising from this report.

6.0 LEGAL IMPLICATIONS

6.1 The Council is required to have a Members Code of Conduct which incorporates the provisions of the Model Code but can also include other provisions provided they do not conflict with the Model Code.

6.2 This report concerns the interpretation of the Brent Code of Conduct in the Brent Constitution. As a breach of the Code has potentially serious consequences it is essential that Members are clear and the Constitution is clearly drafted. As well as Members being required to comply with the Code themselves clause 7 states that 'a member must if he or she becomes aware of any conduct by another member which he or she reasonably believes involves a failure to comply with the authority's code of conduct make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him or her to do so. It is therefore essential that Members be clear which provisions in the Code are guidelines and which are binding provisions and so know when they are required to act.

6.2 A constitutional amendment will need to be made to paragraph 18 and page 1 of the Brent Members Code of Conduct in the Constitution.

7.0 DIVERSITY IMPLICATIONS

7.1 Officers believe that there are no specific diversity implications in this report.

8.0 BACKGROUND INFORMATION

The Relevant Authorities (General Principles) Order 2001

Local Authorities (Model Code of Conduct) (England) Order 2001

Any persons wishing to inspect the papers in connection with the above proposals shall contact Jane Alver at jane.alver@brent.gov.uk, Town Hall Annexe, Forty Lane, Wembley Middlesex HA9 9HD – Telephone number 0208 937 1368

BRENT MEMBERS CODE OF CONDUCT

This Code of Conduct incorporates the whole of the model code of conduct for authorities operating executive arrangements set out in Statutory Instrument 2001/3575. It also sets out the ten principles which are to govern the conduct of members and which principles all members are required to adhere to.

**PART 1
GENERAL PROVISIONS**

Scope

1. (1) A member must observe the authority's code of conduct whenever he or she:-
 - (a) conducts the business of the authority;
 - (b) conducts the business of the office to which he or she has been elected or appointed; or
 - (c) acts as a representative of the authorityand references to a member's official capacity shall be construed accordingly.
- (2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.
- (3) Where a member acts as a representative of the authority:-
 - (a) on another relevant authority, he or she must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, he or she must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
- (4) In this code, "member" includes a co-opted member of an authority.

General Obligations

2. A member must:-
 - (a) promote equality by not discriminating unlawfully against any person;
 - (b) treat others with respect; and
 - (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

3. A member must not:-
 - (a) disclose information given to him or her in confidence by anyone, or information acquired which he or she believes is of a confidential nature, without the consent of a person authorised to give it, or unless he or she is required by law to do so; nor
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
4. A member must not in his or her official capacity, or any other circumstance, conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute.
5. A member:-
 - (a) must not in his or her official capacity, or any other circumstance, use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of the authority:-
 - (i) act in accordance with the authority's requirements; and
 - (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.
6. (1) A member must when reaching decisions:-
 - (a) have regard to any relevant advice provided to him or her by:-
 - (i) the authority's Chief Finance Officer acting in pursuance of his or her duties under section 114 of the Local Government Finance Act 1988; and
 - (ii) the authority's Monitoring Officer acting in pursuance of his or her duties under section 5(2) of the Local Government and Housing Act 1989.
 - (b) give the reasons for those decisions in accordance with the authority's and any statutory requirements in relation to the taking of an executive decision.

- (2) In sub-paragraph (1)(b) above and in paragraph 9(2) below, "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.
7. A member must, if he or she becomes aware of any conduct by another member which he or she reasonably believes involves a failure to comply with the authority's code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him or her to do so.

PART 2 INTERESTS

Personal Interests

8. (1) A member must regard himself or herself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself or herself, a relative or a friend or –
- (a) any employment or business carried on by such persons;
 - (b) any person 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 corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.
- (2) In this paragraph –
- (a) "relative" means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
 - (b) "partner" in sub-paragraph (2)(a) above means a member of a couple who live together.

Disclosure of Personal Interests

9. (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered 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) Subject to paragraph 12(1)(b) below, a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

Prejudicial Interests

10. (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if 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 the member's judgement of the public interest.
- (2) A member may regard himself or herself as not having a prejudicial interest in a matter if that matter relates to –
 - (a) another relevant authority of which he or she is a member;
 - (b) another public authority in which he or she holds a position of general control or management;
 - (c) a body to which he or she has been appointed or nominated by the authority as its representative;
 - (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he or she does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;
 - (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
 - (f) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority; and
 - (g) the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.

Overview and Scrutiny Committees

11. (1) For the purposes of this Part, a member must if he or she is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee, regard himself or herself as having a personal and a

prejudicial interest if that consideration relates to a decision made, or action taken, by another of the authority's –

- (a) committees or sub-committees; or
 - (b) joint committees or joint sub-committees, of which he or she may also be a member.
- (2) But sub-paragraph (1) above shall not apply if that member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

Participation in Relation to Disclosed Interests

12. (1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must –
- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he or she has obtained a dispensation from the authority's standard's committee;
 - (b) not exercise executive functions in relation to that matter; and
 - (c) not seek improperly to influence a decision about that matter.
- (2) A member with a prejudicial interest may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 11 above, participate in a meeting of the authority's –
- (a) overview and scrutiny committees; and
 - (b) joint or area committees
- to the extent that such committees are not exercising functions of the authority or its executive.
13. (1) For the purposes of this Part, "meeting" means any meeting of –
- (a) the authority;
 - (b) the executive of the authority; or
 - (c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees.

PART 3 THE REGISTER OF MEMBERS' INTERESTS

Registration of Financial and Other Interests

14. Within 28 days of the provisions of an authority's code of conduct being adopted or applied to that authority or within 28 days of his or her election or appointment to office (if that is later), a member must register his or her financial interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of –
- (a) any employment or business carried on by him or her;
 - (b) the name of the person who employs or has appointed him or her, the name of any firm in which he or she is a partner, and the name of any company for which he or she is a remunerated director;
 - (c) the name of any person, other than a relevant authority, who has made a payment to him or her in respect of his or her election or any expenses incurred by him or her in carrying out his or her duties;
 - (d) the name of any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
 - (e) a description of any contract for goods, services or works made between the authority and himself or herself or a firm in which he or she is a partner, a company of which he or she is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
 - (f) the address or other description (sufficient to identify the location) of any land in which he or she has a beneficial interest and which is in the area of the authority;
 - (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he or she is a partner, a company of which he or she is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
 - (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he or she has a licence (alone or jointly with others) to occupy for 28 days or longer.
15. Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his or her other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's Monitoring Officer of his or her membership of or position of general control or management in any –
- (a) body to which he or she has been appointed or nominated by the authority as its representative;

- (b) public authority or body exercising functions of a public nature;
 - (c) company, industrial and provident society, charity, or body directed to charitable purposes;
 - (d) body whose principal purposes include the influence of public opinion or policy; and
 - (e) trade union or professional association.
16. A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 14 and 15 above, provide written notification to the authority's Monitoring Officer of that change.

Registration of Gifts and Hospitality

17. A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's Monitoring Officer of the existence and nature of that gift or hospitality.

**PART 4
THE 10 GENERAL PRINCIPLES OF CONDUCT**

18. A member must adhere to the following ten principles of conduct when acting in an official capacity or when acting in any way which is connected to or relates to the Council. In addition, a member must adhere to principles 2 and 8 at all times.

THE 10 GENERAL PRINCIPLES OF CONDUCT

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. 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

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. 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

5. 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

6. 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

7. 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

8. 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

9. 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

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