

NEW MODEL CODE OF CONDUCT

Report By: Head of Legal and Democratic Services

Purpose

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. This report seeks Members' views in relation to Parish and Town Councils in Herefordshire in relation to the adoption of the Code of Conduct by them.
3. The report seeks Members' views in relation to a number of matters arising out of the adoption of the new Model Code of Conduct.
4. This report also seeks Members' view on the proposed addition to the mandatory Code of Conduct.
5. The Report seeks the recommendation of Members to the Council Meeting on 27th July 2007 to adopt the new Model Code of Conduct.

Financial Implications

6. 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 Herefordshire Council and Members and Clerks of Parish Councils. Copies of the new Model Code of Conduct as adopted are to be available for inspection, and a copy of the Code that each council approves will be sent to the Standards Board for England. Notice of adoption must be published in the Council's own newsletter "Herefordshire Matters" and a local newspaper.

Background

7. It is a function of the Standards Committee to advise the Council 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 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 Herefordshire Council and all Parish and Town Councils within Herefordshire adopt 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.
8. 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.

9. All of the provisions set out in the Model Code are mandatory for Herefordshire Council. Paragraphs 7, 10 (2) (c) (i) and (ii), 11 and 12 (2) are not mandatory for Parish Councils. A draft Code is included as Appendix 2 to this report.
10. It is proposed that the adoption of the Code be put to the Council meeting to be held on the 27th July 2007. A copy of the mandatory provisions of the Model Code is attached as Appendix 1 to this report in the form in which it would appear in the Council's Constitution, if adopted.
11. It is advised that the Members consider the additional provisions which should be added to the Code of Conduct.
12. A Member training seminar will be arranged for Members of Herefordshire Council as soon as possible through Members' Services.

Parish Councils

13. The functions that derive from Part 3 of the Act are discharged in relation to Herefordshire Council and its Members, and also in relation to Parish Councils which are wholly or mainly in Herefordshire Council's area.
14. Parish and Town Councils are under the same obligation to adopt and implement a new or revised Code of Conduct, reflecting the mandatory provisions contained within the Model Code by 1 October 2007. A draft Code is included to the report as Appendix 2.
15. The timing of adoption of the Code is for each Parish Council to determine in accordance with the requirement that they adopt the Code by 1 October 2007. Parish Councils through the Herefordshire Association of Local Councils ("HALC") and the Standards Committee have agreed dates in July 2007 to train Parish Clerks on the Code of Conduct. Parish Councils not members of HALC will need to consider their Parish Council Members' training in relation to the Code.

Summary of the Changes in the Code

Preamble

16. The ten principles derive from the Nolan Committee's seven principles of public life. 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.
17. 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.
18. 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

19. 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.

20. 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.
21. 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

22. 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).
23. 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).
24. A new obligation is placed on Members to have regard to the Code of Recommended Practice on Local Authority Publicity (paragraph 6 c). Members will be familiar with this as it has been the subject of previous advice issued by the Monitoring Officer prior to the recent local elections period.
25. The obligation to have regard to any relevant advice given by the Monitoring Officer and Chief Finance Officer has been retained (paragraph 7. (1)).
26. 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.
27. 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 suggested that Members be advised to contact the Monitoring Officer for advice before they release any confidential information and have regard to such advice. As the Committee 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

28. 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.
29. 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.
30. 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.
31. Personal interests (paragraph 8.1.a) should be registered in the Register of Members' Interests, which is maintained by the Monitoring Officer, 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).
32. If the personal interest relates to a body to which a Member has been nominated or appointed by the Council, 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).
33. 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 Monitoring Officer agrees.
34. 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

35. 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).
36. 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 housing; school meals; school transport and travel expenses; statutory sick pay; members' allowances payments or indemnities; ceremonies honours; or setting the Council 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

37. 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.
38. 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.
39. 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.

SUMMARY

40. 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.
41. There will be consequential changes needed to the Council's existing Code and Protocols as a result of the adoption of the Code.

RISK MANAGEMENT

42. Not to adopt the new Code will mean that the new Code will apply in any event by default.

RECOMMENDATION

THAT Council 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;

Council be recommended to include the following optional provisions of the revised Code of Conduct:-

- (i) inclusion of paragraph 6 (c) relating to the Code of Publicity
- (ii) inclusion of paragraph 10 (c) (i) (ii) and 11 relating to executive arrangements and scrutiny.
- (iii) Inclusion of paragraph 12 (2) enabling Members to make representations to meetings as a member of the public despite.

Council be recommended to include the following supplemental text as part of the Code of Conduct:

- (i) The addition of an extended definition of “meeting” to apply the rules on disclosure and withdrawal to informal meetings, by the addition of a new paragraph (1 (4) (d) as follows “*informal meetings with other Members and / or with officers relating to the discharge of the Authority’s functions*”;
- (ii) The addition of a new paragraph 3 (4) as follows “*In particular, you shall not provide or offer to provide a reference for any candidate for appointment or promotion as an officer of the Authority*”.
- (iii) Extend paragraph 6 (b) to read as follows “... *where issuing or authorising the use by others of the resources of your authority or of resources of which*”

Parish Councils within Herefordshire be recommended to adopt the Code and preamble set out at Appendix 2

All Members and co-opted members of Herefordshire Council be encouraged to attend appropriate training sessions on the new Code which are likely to take place during July and September 2007.

Any consequential changes to the Council's existing Codes and Protocols needed as a result of the adoption of the Code be reviewed by the Committee with the aim of early approval by Council.