

Agenda Item:

Report to: STANDARDS COMMITTEE

Date: 7 June 2007

Report from: BOROUGH SOLICITOR

Title of report: REVISED MEMBER CODE OF CONDUCT

Purpose of report: To advise members of the revisions to the Code of Conduct and to recommend additional provisions

Recommendations: That Committee recommends to Council to adopt the revised Code of Conduct together with the additional provision set out in paragraph 8 of the report.

INTRODUCTION

1. Members will recall that Committee commented on the Government's proposed revisions to the Code of Conduct. The Government has now made regulations setting out the model code of conduct for authorities. Every local authority must adopt the revised Code of Conduct (with or without local additions) by resolution of Council within 6 months of the date on which it came into force, (which was 2nd April 2007), i.e. on or before 1st October 2007. Where an authority fails to adopt the revised Code of Conduct by that date, the mandatory provisions of the revised Code of Conduct apply automatically, until the authority adopts the revised Code of Conduct. Until that time, the current Code of Conduct applies.

2. The Code has been drafted so that some provisions only apply to certain authorities eg parish councils. All provisions of the model code apply to this Council, as a district council. The Model Code shown in appendix A is, therefore, the minimum that the Council must adopt.

PRIMARY REVISIONS TO THE CODE

3. Whilst the structure of the revised Code remains similar to the current Code, there have been some major changes and these can be summarised as follows:-

- a. In terms of when the Code of Conduct applies to members, the revised Code of Conduct follows the judgment of the High Court in the Livingstone case, ie
 - to apply only to conduct in the performance of a member's functions as a member, and not to apply to events in a member's private life. The exception to this relates to criminal conduct, which the revised Code of Conduct purports to cover even if it occurs in a member's private life. Members will recall that the High Court judgement was based on the finding that the Government had exceeded the powers under the Local Government Act 2000, which required members to observe the Code "in the performance of their functions" as councillors. The current Local Government and Public Involvement in Health Bill, however, proposes to close this and to re-apply the Code of Conduct to events in a member's private life, but this may require significant further re-drafting. The Code does include conduct other than in an official capacity in relation to conduct included in paragraphs 3(2)(c), 5 and 6(a) where that conduct results in a criminal conviction.

- b. The general conduct rules are amended
- to include new offences of not doing anything that might result in your authority being in breach of any of the equality legislation, bullying and of intimidation and victimisation in respect of standards proceedings.
 - the offence of failing to report breaches of the Code of Conduct by other members is deleted;
 - the duty to honour confidentiality is retained but with a new public interest defence for breach of confidentiality, ie the disclosure is reasonable and in the public interest and is made in good faith and in compliance with the reasonable requirements of the authority.
 - to include a duty to have regard to the Local Authority Code of Publicity made under the Local Government Act 1986.
- c. In relation to interests:-
- The list of registrable interests almost identical to the old paragraphs 14 and 15, though it has been restructured to bring all interests under one paragraph and there have been some changes of substance. One example of a substantive change is the new personal interest where the item relates to or is likely to affect the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25. As a personal interest this is required to be disclosed and the nature of the interest disclosed for a period of 3 years after first registration.
 - The effect on the well-being or financial position of the member or a relative or friend becomes the effect on that of the member or a relevant person. Relevant person is defined as a member of your family or any person with whom you have a close association; or any person or body appointing such persons, or partnership in which he/she is a partner, or a company of which he/she is a director; any body in which such person has a beneficial interest in securities with a nominal value exceeding £25,000; or relationship to a body as described in paragraph 8(1)(a)(i) and (ii).
 - The Code provides that sensitive information concerning a member's interest need not be registered ie information whose availability for inspection by the public creates, or is likely to create, a serious risk that the member or a person who lives with the member may be subjected to violence or intimidation. The decision not to register requires the approval of the monitoring officer.
 - It is in order to participate fully where the interest is shared with the majority of residents of the ward or electoral division affected ie there is no personal interest.
 - Where the personal interest arises by reason of appointment or nomination to an outside body or by reason of membership of any body exercising functions of a public nature, it is not

necessary to disclose the interest unless the member addresses the meeting on that business.

- New relaxations are introduced to enable a member with a prejudicial interest to make representations to a meeting in the same manner as members of the public. The duty to withdraw applies (unless the member has a dispensation from Standards Committee) immediately after making representations, answering questions or giving evidence.

TRANSITIONAL PROVISIONS

4. Until the new Code is adopted by Council, members are bound by the provisions of the current Code. Existing allegations of misconduct and any arising before adoption of the new Code will be considered accordingly.
5. Members who have made their declaration of acceptance of office, also undertake to observe the “ Code of Conduct for the time being”. It is not necessary, therefore, for members to give a new undertaking to observe the revised Code.
6. There is no saving for the register of interests already completed by members and so members will have to complete a fresh register of interests within 28 days of adoption of the revised Code by Council.

TRAINING FOR MEMBERS

7. Training should have already taken place for members on the revised Code at the date of this meeting. Further training may be given later in the year as the new Code beds in and any difficulties emerge. Members are advised to read the Standards Board “The Code of Conduct Guide for Members May 2007” on the Standards Board Website
www.standardsboard.co.uk/TheCodeofConduct/Guidance/

ADDITIONAL PROVISIONS TO THE MODEL REVISED CODE

8. Some advisor/trainers recommend additional provisions to the model revised Code of Conduct. For example, it is suggested to extend the duty to declare personal and prejudicial interests at “informal meetings with other members and/or officers relating to the discharge of the authority’s functions.” It is clear that the opportunity for influencing policy and decision-making is as great at an informal meeting as at the formal meeting. Currently, the revised Code only applies to formal meetings ie Council, Cabinet, committees and sub-committees. It is recommended that this is adopted as an addition to the Code.

9. The Standards Board is exhorting authorities to adopt the model Code as it is without amendment. The reasoning behind this is “that this will give certainty to members and the public as to what standards are expected; that it will ensure consistency throughout local authorities, avoiding confusion for members on more than one authority and for the public; that it will also minimise the legal risk of your authority adopting additional provisions which are unenforceable.”

Equalities & Community Cohesiveness	<input type="checkbox"/>
Crime and Fear of Crime (Section 17)	<input type="checkbox"/>
Risk Management	<input type="checkbox"/>
Environmental issues	<input type="checkbox"/>
Economic / Financial implications	<input type="checkbox"/>
Human Rights Act	<input checked="" type="checkbox"/>
Organisational Consequences	<input checked="" type="checkbox"/>

Report written by: Jayne Butters, Borough Solicitor and Monitoring Officer Tel. 01424 451733; e-mail jbutters@hastings.gov.uk