

Adoption of a new Code of Conduct for Members of Swindon Borough Council

Standards Committee

Date: 30th April 2007

Author: Director of Law and Democratic Services (Monitoring Officer)

Parish/Wards Affected: All

Purpose

- To report on the new Model Code of Conduct for Local Authority members (the Code) and to agree that it be adopted by Swindon Borough Council in place of its existing Code of Conduct, and to recommend that Parish Councils within Swindon do likewise.

Recommendation

It is Recommended that:

- Council be recommended to adopt the Model Code of Conduct issued by the Secretary of State for Communities and Local Government as set out in the Local Authorities (Model Code of Conduct) Order 2007 [‘the Code’], together with a preamble incorporating the ten general principles governing the conduct of members, in place of its existing Code;
- Parish Councils within Swindon be recommended to adopt the Code and preamble;
- All members and co-opted members of Swindon Borough Council be requested to attend the training session on the new Code which has been arranged for members on the 13th June 2007, and all members be encouraged to attend the introductory session on 9th May 2007 which has been arranged as part of the Induction for new members;
- It be noted and welcomed that two training sessions on the new Code have been arranged for Parish Councillors on 10th May and 24th May; and
- The consequential changes to the Council’s existing Codes and Protocols needed as a result of the adoption of the Code be included in the Standards Committee Work Programme for 2007/08.

1. Reasons

- 1.1 It is a function of the Standards Committee to advise the Council on the adoption or revision of the Members’ Code of Conduct.

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2. Detail

Background

- 2.1 Members last considered proposals for a revised Members Code of Conduct at the Standards Committee meeting on 26th February 2007, and agreed a response to the Consultation Paper issued at that time.
- 2.2 Following the consultation process, the Secretary of State for Communities and Local Government made the Local Authorities (Model Code of Conduct) Order 2007 on 2nd April 2007. The Order contains a new Model Code, which is attached as Appendix '1'. Under Section 51 of the Local Government Act 2000, it is the duty of a Local Authority to adopt the new Model Code within 6 months of the making of such an Order.
- 2.3 The Standards Board for England is issuing general Guidance on the Code and the current recommendation from the Standards Board is that Local Authorities should adopt the new Code in its model form without amendment. This is to give certainty to members and the public as to what standards are expected; ensure consistency throughout England, and minimise the legal risk of adopting additional provisions that are unenforceable. The Standards Board, however, do recommend that local authorities include a preamble to the Code which outlines the ten general principles governing the conduct of members. The suggested preamble is set out as Appendix '2'.
- 2.4 As the new Code substantially relaxes the restrictions on members making representations where they have a prejudicial interest, it is considered that there is no merit in continuing to apply such restrictions and that the new Code should be adopted by the Council at the earliest opportunity. Accordingly, a special meeting of Standards Committee has been convened in order that it can recommend that the new Code be adopted at the Annual Meeting of the Council on 18th May 2007.
- 2.5 On that basis, it is intended as part of the induction process for new members to give training on the new Model Code. It is recommended that all members be encouraged to attend the introductory session for new members on **9th May**, which has been arranged as part of their Induction. This is so that all members are equipped with a basic knowledge of the Code in relation to meetings taking place before the detailed training session that has been arranged for **13th June 2007**, which all members and co-opted Members should attend. Further training sessions for each Political Group or individual members can be arranged with the Monitoring Officer if required.

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial on 01793 463012 or Email staylor@swindon.gov.uk.

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- 2.6 It is to be welcomed that the Monitoring Officer and the Parish Clerks have arranged for two training sessions for Parish Councillors on 10th May (Haydon Wick Parish Council offices) and 24th May (Ellendune Centre).

Summary of Changes to the Code

Preamble

- 2.7 The 10 Principles are derived from the original Nolan Committee's Principles of Public Life. They set out the basis for the obligations contained within the Code and may be a helpful summary for members of the ethical framework within which they should act. Compliance with the Principles is not of itself a statutory obligation but failure to act in accordance with the Principles could potentially result in a breach of the Code as constituting, for example, conduct which could reasonably be regarded as bringing a member's office or authority into disrepute.

Comment:

- 2.8 **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 interpreted.**

Scope

- 2.9 As before, the Code is intended to apply when a member is acting in an official capacity. Although not well phrased, para 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 3 instances set out in the Code where this is the case are in relation to intimidation (para 3.2.c); bringing the office or authority into disrepute (para 5); and improperly seeking an advantage (para 6.a). The last 2 instances were also included within the previous Code.
- 2.10 Until the proposed amendments to section 52 of the Local Government Act 2000, 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.

Comment:

- 2.11 **The new provisions are broadly in line with the Standards Committee's own previously expressed view that only criminal**

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activity of a sufficiently serious nature (ie imprisonable) should be able to be taken into account in determining if a member is bringing the Council into disrepute. As drafted, however, any criminal conviction is capable of being taken into account. There may well, therefore, be local variations of interpretation on the weight to be given to various criminal convictions when local filtering is introduced. Conversely, 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

- 2.12 The positive obligation to treat others with respect remains (para 3.1 refers). 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 (para 3.2.a). A new requirement not to bully any person has been inserted (para 3.2.b).
- 2.13 The provisions regarding confidentiality have been changed to also 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 (para 4.a.iv).
- 2.14 There is a new obligation on members to have regard to the Code of Recommended Practice on Local Authority Publicity (para 6.c). Members will be familiar with this as it has been the subject of previous advice issued by the Monitoring Officer, especially during the election period, and it is also the basis of the Council's own Media Guidelines which are set out in the Constitution and which are currently being reviewed.
- 2.15 The obligation to have regard to any relevant advice given by the Monitoring Officer and the Chief Finance Officer has been retained and strengthened (para 7.1).
- 2.16 There is no longer any requirement on members to report any breaches of the Code to the Standards Board.

Comment:

- 2.17 **There was a concern in some quarters that under the current Code the obligation to promote equality inhibited the expression of opinions and beliefs. It is clear now that members are able to express their views but the Guidance from the Standards Board is**

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likely to stress that members must be careful not to discriminate against other people when so doing.

- 2.18 The new bullying provision is likely to be the subject of further Guidance from the Standards Board which will stress that whereas offensive, intimidating or insulting behaviour is likely to constitute a breach of the new Code, this should be contrasted with legitimate challenges to fellow councillors or officers as to why they hold their views or have given particular advice. Personal criticism or attack, however, is likely to cross the line of what is acceptable behaviour.**
- 2.19 So far as the new confidentiality provisions are concerned, detailed Guidance is to be issued by the Standards Board as to the nature of the 'public interest' test that should be satisfied before disclosure together with an emphasis on the need to raise concerns through the proper channels before disclosure. It would be helpful if the same criteria as is used in relation to release of Committee Papers could be applied and no doubt the Standards Board will consider this issue. So far as Swindon is concerned, it is suggested that members be asked to contact the Monitoring Officer for advice before they release any confidential information.**

Declarations of Interest – Personal Interests

- 2.20 The new list of personal interests required to be registered in the Register of Members Interests (para 8.1.a) is very similar to the current list. To the current list, however, has been added a new personal interest; namely, where it relates to or is likely to affect the interests of any person from whom at least £25 worth of gift or hospitality has been received (para 8.a.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.**
- 2.21 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, ratepayers or inhabitants of the ward affected by the decision.**
- 2.22 The list of relevant people includes family or 'any person with whom you have a close personal association' as well as employers of those people. A member is, however, only liable to declare the interest if aware or ought reasonably to be aware of its existence.**

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- 2.23 Personal Interests as listed in para 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 (para 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 (para 9.1).
- 2.24 Where the personal interest relates to a body to which the 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 (para 9.2).
- 2.25 As now, if a Personal Interest is declared which is not prejudicial, the member may stay, speak and vote.
- 2.26 There are some detailed provisions with regard to disclosure of particular interests that members will need to acquaint themselves with in case any apply to their own circumstances. Details of 'sensitive information' that could create a serious risk of violence or intimidation need not be disclosed (para 9.5) or registered (para 14) provided the Monitoring Officer agrees.

Comment:

- 2.27 **The Personal Interest test under the current Code refers to a member having such an interest if a decision upon it might reasonably be regarded as affecting the well being or financial position of the member, a relative or a friend to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area.**
- 2.28 **The new Code has removed the reference to 'friend' and has used a wider term covering any person with whom the member has a 'close association'. Conversely, the number of declarable personal interests could be argued as likely to be reduced by restricting declarations to those matters affecting the majority of the inhabitants of the ward affected by the decision. The term 'family' is no longer defined.**

Prejudicial Interests

- 2.29 The basic prejudicial interest test is the same as now; 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 knowledge of the relevant facts,

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would reasonably regard as so significant that it is likely to prejudice the members judgment of the public interest (para 10.1).

- 2.30 The new Code, however, provides (para 10.2) that a member does not have a prejudicial interest where:
- the matter under discussion does not affect the financial position of the member, or any person or body described in para 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 para 8 in relation to whom a member may have 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; ceremonial honours; or setting the council tax.
- 2.31 The exceptions set out above do need to be carefully studied as a number of them are different than the current position and Members need to ensure that they are familiar with them.
- Effect of Prejudicial Interests on participation
- 2.32 The basic rule is as now; namely that unless a dispensation has been obtained from the Standards Committee, a member with a prejudicial interest must withdraw from the room or chamber. Prior to withdrawing, however, under the new Code a member with a prejudicial interest may 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 then immediately withdraw from the room or chamber.
- 2.33 The intention is to ensure that a member has the same right as an ordinary member of the public to speak at a meeting open to the public despite having a prejudicial interest.
- 2.34 The current requirements not to exercise executive functions where there is a prejudicial interest, or to improperly influence a decision are repeated in the new Code.

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Comment:

- 2.35** There are two important changes to the section of the Code dealing with prejudicial interests. The first change is that a member will have same right as any member of the public to address the meeting even if that member has a prejudicial interest. After speaking, however, the member will then need to immediately withdraw from the room. This will, for example, allow members who belong to special interest groups or who were elected on a particular issue to make representations at a meeting open to the public.
- 2.36** The second significant change concerning the list of exemptions relates to the way the Code is worded. Currently, if one of the exemptions applies a member may regard him or herself as not having a prejudicial interest. This means that a member has to make a conscious decision whether or not to take advantage of one of the exemptions or whether to declare a prejudicial interest. In the new Code, it is clearly stated that a member does not have a prejudicial interest in one of the matters in the list of exemptions so there is no discretion in the matter any longer.
- 2.37** Perhaps the most significant exemption is where the matter under discussion does not affect the financial position of the member or any person or body in whom the member has a financial interest. This, in effect, is reviving the old 'pecuniary interest' test so that if there is no pecuniary or financial interest, then the member does not have a prejudicial interest to declare unless the matter relates to a licensing or regulatory matter affecting the member, or person or body in which the member may have a personal interest.
- 2.38** It was hoped by a number of Monitoring Officers that the new Code would include a specific section on 'bias and predetermination' but this has not been done, so members will still need to separately consider 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

- 2.39** There have been a number of significant changes from the current Code and, indeed, from the Code issued for consultation earlier this year. The delicate 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

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Code and greater participation by members with prejudicial interests has been allowed.

- 2.40 There will be consequential changes needed to the Council's existing Codes and Protocols as a result of the adoption of the Code, and it is suggested that these be included in the Standards Committee Work Programme for 2007/08.

Alternative Options

- It is a statutory duty to adopt the Code. If not adopted within 6 months, it will automatically be applied. Although it is possible to make amendments, the advice from the Standards Board for England is that this is not done for the reasons set out earlier.

Risk Management

Financial and Procurement Implications

- None

Legal / Human Rights Implications

- The Code regulates the actions of Councillors. It is considered that any interference with individual rights is proportionate.

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

- The adoption of new Code of Conduct underpins the delivery of the Corporate Plan and its aim in 'Transforming the Organisation' for strong and effective leadership and for Council's leaders to be role models of the behaviour and values set out in the Corporate Plan.

Consultees

- Chief Executive
- Group Director, Resources
- The Director of Finance (Section 151 Officer) and the Director of Law and Democratic Services (Monitoring Officer) are consulted on all reports.

Background Papers and Appendices

- Appendix '1' – The new Model Code
- Appendix '2' – Preamble setting out the 10 Principles