

TONBRIDGE & MALLING BOROUGH COUNCIL

STANDARDS COMMITTEE

29 August 2007

Report of the Monitoring Officer

Part 1- Public

Matters for Recommendation to Council

1 ADOPTION OF A NEW CODE OF CONDUCT

Executive summary:

This report recommends the adoption of a new code of conduct and associated protocols.

1.1 Introduction

- 1.1.1 On 2 April 2007, the Government published a Revised Model Code of Conduct for Members, which local authorities have until 3 October 2007 to formally adopt a new code of conduct which is consistent with the model and incorporates all of the mandatory elements.
- 1.1.2 Following consideration by this Committee, its recommendations will be considered by Council at its meeting on 25 September 2007, when it is expected that the new code will be adopted.
- 1.1.3 Once an authority has adopted the revised Code of Conduct, it must –
- 1) ensure that copies of the Code of Conduct are available for inspection at the authority's offices;
 - 2) publish notice of the adoption of a Code of Conduct in any newspaper which they publish and in a local newspaper, and
 - 3) send a copy of the Code of Conduct, as adopted, to the Standards Board for England (SBE).
- 1.1.4 Members of the Council are then required to complete a new declaration of interests (a "Blue Form") within 28 days. However, members will not be required to make a declaration to comply with the code, as happened in 2002, because that undertaking is now included within the declaration of acceptance of office which all members will have completed.

1.1.5 In addition to elected councillors, the code and the foregoing procedural requirements also apply to co-opted members of the Council's committees. These include:

- the independent members of the Standards Committee;
- the independent members and parish council representatives on the Town and Parish Councils Standards Sub-Committee; and
- the co-opted members of the Policy Overview and Scrutiny Committees.

1.1.6 Although the Revised Model Code of Conduct follows the broad structure of the current Code of Conduct, it makes the following substantial changes:

- 1) in terms of when the Code of Conduct applies to Councillors, the revised Code of Conduct follows the judgment of the High Court in the *Livingstone* case, 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 sole 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: the effectiveness of this provision depends upon the passage of the Local Government and Public Involvement in Health Bill;
- 2) the general conduct rules are extended to include new "offences" of bullying and of intimidation and victimisation in respect of standards proceedings;
- 3) the "offence" of failing to report breaches of the Code of Conduct by other Members is removed; and
- 4) a new public interest "defence" is introduced for breach of confidentiality.

1.1.7 Also the provisions relating to interests are re-ordered and 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, and to participate fully where the interest is shared with the majority of residents of his/her ward or electoral division.

1.1.8 Members are asked to note that a significant change from the consultation draft is that the "equality" paragraph has been re-drafted by the Government and changed from a direct obligation on the Member not to discriminate unlawfully, to one of an obligation not to cause the Council to breach any of the equality enactments. This arises from the *Islington* case, which held that an Employment Tribunal has exclusive jurisdiction to find that a Member had discriminated unlawfully and the SBE and the Adjudication Panel for England were not competent to make such findings.

1.2 The approach to a new Code

- 1.2.1 In addition to the above, a modular approach to the Revised Code has been adopted to cover different tiers of local authorities and responsibilities instead of the current and separate four National Codes. A version of the model code, personalised for this authority, is set out at **[Annex 1]** to this report.
- 1.2.2 In making the model code specific to us, I have followed, so far as it possible, the SBE's guidance that the model code should not differ materially from the model code, as to do so would fail to ensure consistency between the different tiers of local authorities and responsibilities; it may also be *ultra vires*.
- 1.2.3 Although not incorporated in the new model code, as was intimated at the consultation draft stage, are the statement of principles of conduct in public life. In accordance with the guidance from SBE, this statement has been incorporated as an annex to the code. This will make them available to members as a ready reference. Whilst breach of this statement does not constitute a breach of the code, SBE do take them into account when considering conduct under the Code.

1.3 New local protocols

- 1.3.1 In addition to the adoption of the code, I am recommending the adoption of eight protocols to the code of conduct set out in [Annex 2] to this report. Protocols are not part of the code of conduct, but are supplemental to it. Breaches of any of the local protocols are matters for the Standards Committee to deal with and not the SBE, although they may be relied upon by SBE when investigating whether there has been a breach of the code of conduct.
- 1.3.2 **Protocol A** deals with real, practical issues relating to the completion of declaration of interest forms and the maintenance of the Register. The existing white form will be replaced by a new blue form, but updates will still need to be made on a yellow form. At present gifts and hospitality are recorded in a separate register, which is now incorporated within the main register. In order to avoid the need to complete a yellow form on each occasion, a revised version of the pink form will be available for members' use.
- 1.3.3 **Protocol B** deals with member attendance at training and follows upon the discussion held at the committee's meeting on 7 March 2007 and the committee's response to the consultation draft. Specifically, it deals with a situation where a member has not undergone training in planning, as required by the Planning Code of Good Practice, or training in alcohol and entertainments and gambling training, as required by the legislation.

- 1.3.4 **Protocol C** deals with supplementary matters relating to gifts and hospitality and gives guidance on the circumstances in which they should be accepted or refused.
- 1.3.5 **Protocol D** provides a guide to the use of Council resources by members and is supplementary to paragraph 6 of the code.
- 1.3.6 **Protocol E** sets out the framework to be followed in respect of the disclosure of confidential information set out in paragraph 4 of the code. It is the procedure which members are required by the code to follow before making a disclosure of confidential information in the public interest.
- 1.3.7 **Protocol F** replaces the existing Members` Planning Code of Good Practice. It has been updated to reflect the changes in the code of conduct and recent developments in the law relating to bias in decision making.
- 1.3.8 **Protocol G** is the Members` Licensing Code of Good Practice, which has also been updated to reflect changes in the code of conduct and the revision of the Secretary of State's Statutory Guidance.
- 1.3.9 **Protocol H** is a new protocol, based upon the model produced for police authorities, which sets the boundaries of acceptable political activity for independent members of the Council's Standards Committee.
- 1.4 Personal and prejudicial interests**
- 1.4.1 The list of interests in Paragraph 8.1(a) is virtually identical to the relevant paragraphs of the current Code of Conduct. The major changes are set out in the following paragraphs.
- 1.4.2 In Paragraph 8.1(a)(ii)(bb), the definition has been narrowed by the omission of "company, industrial and provident society (or) charity", leaving just body "directed to charitable purposes". As in the current Code, membership of a Freemasons' lodge *per se* is not a registerable interest, but as all Masons contribute to the United Grand Lodge Charity, usually known as the "UGL Charity", those subscriptions continue to be caught by such a definition as a registered charity
- 1.4.3 In Paragraph 8.1(a)(cc) the phrase "(including any political party or trade union)" is a helpful clarification, as members do overlook this aspect.
- 1.4.4 Paragraph 8.1(a)(viii) in respect of gifts and hospitality is new and incorporates declarations of gifts and hospitality within the main register rather than in a separate register. As such, the information will now be open to public inspection. The Revised Code will, however, place a new obligation on Members to disclose not only for the Register but also at meetings, gifts and hospitality, received over the past three years when dealing with business related to the donor.

- 1.4.5 Currently, a Member does not have a personal interest where a decision on the matter would not affect him/her to a greater extent than other council tax-payers, ratepayers or inhabitants of the whole authority's area. In the Revised Code of Conduct, it is not a personal interest where it would not affect the member to a greater extent than the majority of the council tax payers, ratepayers or inhabitants of his/her ward or electoral division. This should be a helpful liberalisation.
- 1.4.6 In terms of disclosure of interests, paragraph 9.2 means that, if a member has a personal interest which falls within the category of "public service interest" (i.e. broadly where the interest arises from some form of public service on the part of the member, so that any advantage would accrue to the other public body rather than to the individual member), then the member will not have to disclose that interest at the start of the meeting or at the consideration of the particular matter, but only if and when he or she speaks on the particular matter. This, again, is a helpful liberalisation to permit members to conduct their representative roles.
- 1.4.7 Paragraph 9(4) is also a helpful liberalisation; in that, it will not be a personal interest unless the member actually knew or ought reasonably to have been aware of the existence of the personal interest. The general test in Paragraph 10(1) - as to what comprises a prejudicial interest – also remains unchanged.
- 1.4.8 In terms of the Overview & Scrutiny provision – paragraph 11 - the purpose of this provision is to ensure, as far as possible, that Members are not involved in the scrutiny of their own decisions. This provision has been amended from the current Code of Conduct to provide that a Member will now only have a prejudicial interest if he or she was actually present when the original decision was made, and to extend it to exclude a Member of the Scrutiny Committee who was a Member of the Executive when the Executive took a decision being scrutinised. Paragraph 11 is extremely cumbersome from a legal point of view, as the Local Government Act 2000 provisions have to be relied upon to go behind the wording in the Revised Code to permit an Executive Member to be questioned by an Overview and Scrutiny Committee in relation to an executive decision taken by such a Member.
- 1.4.9 Paragraph 12.2 allows a Member to have the same rights of audience at a meeting as are granted to any member of the public, even where he or she has a prejudicial interest, but then not to participate in the decision-making process. This is a useful relaxation and a helpful reversal of the decision in the *Richardson v North Yorkshire County Council* case and it should help to further support the representative role of elected Members at Area Planning Committees and Panels of the Licensing and Appeals Committee. Appropriate guidance on this aspect is given in Protocols F and G.
- 1.4.10 Under the Revised Code of Conduct, a distinction is made between making representations to the meeting and being involved in the discussion and decision-making process. Once adopted, a Member with a prejudicial interest will be

treated as any other member of the public, so that where the law or the authority's rules grant members of the public a right of audience, the Member may appear as an ordinary member of the public to present a case and answer questions but must then withdraw from any consideration and determination of the matter.

- 1.4.11 Under our Code of Good Conduct in Planning, we have decided that all applications for planning permission by members should be determined by the Area Planning Committee. Difficulties could arise in respect of applications made by members where other members of the Area Planning Committee have a close association" with the applicant. These applications are few and far between and the procedure to be followed in those cases will be the subject of a future report to this Committee.
- 1.4.12 Both our Constitution and the Code of Good Conduct in Planning require members who call-in applications for determination by Committee to give a "reasoned justification" why, in planning terms, the application should be reported. To ensure transparency, these requests, including the name of the member concerned and the reasons given, are now being included in the Director of Planning, Transport and Leisure's committee reports.

1.5 Training and support

- 1.5.1 A copy of the SBE Guidance to the Revised Code, a "Pocket Guide" and Training Material have already been distributed to all members and the new code will feature in ethics training for members. In addition, members have asked for a repeat of the Probity in Planning training, which is currently being organised.
- 1.5.2 SBE are in process of issuing revised training DVD which I hope will be available for exhibition at the next meeting of the Committee. It deals mainly with local investigations and determinations linked to the code of conduct.
- 1.5.3 The Council has been able to secure a few places at the Sixth Annual Assembly of Standards Committees, sponsored by SBE, to be held in Birmingham on 15 and 16 October 2007.
- 1.5.4 As always, all Members are welcome to raise particular issues relating to the code of conduct and protocols in particular or to standards issues in general with the Monitoring Officer and the Deputy Monitoring Officer.

1.6 Legal Implications

- 1.6.1 Under the Local Government Act 2000 the council is required to adopt a code of conduct which is consistent with the model code and incorporates all mandatory provisions.

1.7 Financial and Value for Money Considerations

- 1.7.1 Not applicable.

1.8 Risk Assessment

1.8.1 Not applicable.

1.9 Recommendations

1.9.1 It is **recommended** that the Council adopt the code of conduct and protocols set out in **[Annex 1]** and **[Annex 2]** to the Monitoring Officer's report.

Background papers:

contact: Duncan Robinson

Nil

Duncan Robinson

Monitoring Officer