

Committee: **Standards Committee**

Date: **10 July 2007**

Title: **Model Code of Conduct**

By: **Director of Law and Personnel**

Purpose of report: **To recommend a revised Code of Conduct to County Council and to agree a programme of communication and training for all members in relation to the revised code.**

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## **RECOMMENDATIONS**

**That the Standards Committee recommend County Council to –**

- (1) adopt those provisions of the revised code that are mandatory for this authority;**
  - (2) agree a communication and training programme for members on the new code;**
  - (3) authorise the Monitoring Officer to amend the constitution accordingly.**
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### **1. Financial Appraisal**

1.1 There are no financial implications for this report. All training activities will be provided from the existing training budget for members.

### **2. Introduction**

2.1 The current code of conduct for local authority members was introduced in 2001. Since the introduction of the code, there have been a number of opportunities to feedback on the effectiveness of the code and the Standards Board for England carried out a comprehensive consultation exercise seeking the views of members and officers. The Standards Board made recommendations to Government and the Government's response was published in December 2005 in a document called 'Standards of Conduct in English Local Government: The Future'.

2.2 The Local Government White Paper, 'Strong and Prosperous Communities' published in October 2006 announced the Government's intention to put in place a clearer, simpler and more proportionate code of conduct for members, which would include changes to the rules on personal and prejudicial interests.

2.3 At its last meeting in March, this Committee agreed a response to the final consultation on the draft model code of conduct.

### **3. The Revised Code**

3.1 On 2 April 2007, the Department for Communities and Local Government issued the Local Authorities (Model Code of Conduct) order 2007. Under the Local Government Act 2000, all authorities to whom the code applies have 6 months in which to adopt it. The Order is clear that the new Model Code of Conduct is mandatory, although it does permit authorities to remove certain provisions that do not apply to them. An edited version of the new code revised to include all mandatory items relative to the County Council is attached at Appendix 1.

3.2 The Council has discretion to add to the model text should it wish to do so.

3.3 The scope of the proposed new code of conduct is broadly unchanged. However, the draft revised code seeks to:

- ✧ Reflect the recommendations of the Standards Board for England following their review of the current code
- ✧ Reflect Adjudication Panel for England and High Court decisions on interpretation (discrimination, private capacity, disclosure in public interest)
- ✧ Modify the effect of the Richardson decision to allow a Member to make representations whilst having a prejudicial interest [Richardson & Orme v North Yorkshire County Council].
- ✧ Improve the structure and drafting of the code
- ✧ Be gender neutral

3.4 Although the new code of conduct follows the same broad structure as the old code, it does make the following more substantial changes;

- ✧ 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 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 current Local Government and Public Involvement in Health Bill proposes to re-apply the Code of Conduct to events in a member's private life, but this may require significant further re-drafting.
- ✧ The general conduct rules are extended to include new offences of 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, and a new public interest defence is introduced for breach of confidentiality.
- ✧ The provisions in respect of 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.

3.5 Members are not required to sign a new undertaking to observe the revised Code of Conduct, as the original undertaking was to 'observe the authority's code of conduct' and that undertaking will still stand for the new code.

## **4 Registration of Members' Interests**

4.1 No provisions have been made for the transition of registered interests, so members will have to re-register all their registered interests under the new code within 28 days of the adoption of the code. To facilitate this, all members will be provided with a copy of their current register entries for revision and signature.

## **5 Training implications for members**

5.1 Once the final Code of Conduct is agreed there will be a need to provide guidance and training to all members on the changes. This training need has been included in the members' development plan for the current year recently presented to the Governance Committee.

5.2 In addition it is recommended that a guidance note is circulated to all members and made available on line providing advice on the use of the code.

5.3 Consideration should be given to the development of an e-learning package, developed in conjunction with other authorities for use by all members. This will prove to be particularly useful for new councillors elected in 2009 or through By-election.

5.4 All members will be issued a copy of the guidance provided by the Standards Board for England.

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# **THE CODE OF CONDUCT**

## **Part 1**

### **General provisions**

#### **Introduction and interpretation**

**1.** —(1) This Code applies to **you** as a member of East Sussex County Council.

(2) You should read this Code together with the general principles prescribed by the Secretary of State (attached).

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

"meeting" means any meeting of—

(a) the authority;

(b) the executive of the authority;

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

#### **Scope**

**2.** —(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you

took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

### **General obligations**

**3.** —(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

**4.** You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

**5.** You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

**6.** You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

**7.** —(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

## **Part 2**

### **Interests**

#### **Personal interests**

**8.** —(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body 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 person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

### **Disclosure of personal interests**

**9.** —(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you 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) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type



mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "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.

### **Prejudicial interest generally**

**10.** —(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where 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 your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions

and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

### **Prejudicial interests arising in relation to overview and scrutiny committees**

**11.** You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

### **Effect of prejudicial interests on participation**

**12.** —(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

## Part 3

### Registration of Members' Interests

#### **Registration of members' interests**

**13.** —(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority's monitoring officer.

#### **Sensitive information**

**14.** —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority's monitoring officer asking that the information be included in your authority's register of members' interests.

(3) In this Code, "sensitive information" means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

## **The Relevant Authorities (General Principles) Order 2001**

### **The General Principles governing the Code 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.