

**ITEM**

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**Council: 28<sup>th</sup> June 2007**

## **ADOPTION OF NEW MEMBER CODE OF CONDUCT**

**Report of Head of Corporate Services and Monitoring Officer**

### **Statutory Powers:**

Local Government Act 2000, s.51;  
The Local Authorities (Model Code of Conduct) Order 2007

### **Financial Implications**

There are no significant financial implications for the Council in adopting the recommendations in this report. Any costs can be borne by existing budgets.

### **Purpose**

The Government has issued new Regulations requiring councils and other elected public bodies to review and adopt a new Code of Conduct for members. Many of the provisions are mandatory. The Council must adopt its new Code by October 2007; if it doesn't, the model Code contained in the Regulations is imposed by law. This report invites members to consider whether to include local provisions in addition to the statutory terms.

This report links to **Council Priority no. 5: Working with others to improve access to key services**

### **Recommendations**

**That the Council be RECOMMENDED that:**

- (1) Subject to recommendation (2) below, the Council adopt the revised Code of Conduct set out in Appendix B with effect from today;**
- (2) that the Council include the following supplementary local provisions in the new Code:**
  - a. paragraph 7.1**
  - b. paragraph 7.2**
  - c. paragraph 7.3**
  - d. paragraph 7.4**
- (3) that all members be notified of their need to renew their registration of interests;**
- (4) that a copy of the revised Code of Conduct be supplied to every member of the Council;**

- (5) **that the Monitoring Officer be instructed to publicise the adoption of the new Code as required by statute.**

## Background

1. Local councillors have always been bound by a national code of local government conduct but it was formalised and made statutory in the Local Government Act 2000, which required all councils to adopt a Code of Conduct broadly in accordance with a model code laid down in regulations. The Government and the Standards Board have recently reviewed the operation of the Code and published new Regulations (the Local Authorities (Model Code of Conduct) Order 2007). They came into force on 3<sup>rd</sup> May and a new code must be adopted by 1<sup>st</sup> October 2007, with or without local additions, by resolution of the Council. Should we fail to do so, the mandatory provisions of the model code (all of which apply to district councils) apply in any event from 1<sup>st</sup> October until a revised code is adopted.
2. Once we have adopted a revised Code, we must –
  - Ensure that copies of it are available for public inspection at our offices;
  - Publish in a local newspaper a notice saying that a new Code has been adopted; and
  - Send a copy of the Code as adopted to the Standards Board for England.
3. As part of the induction process for new Members, two sessions of training (on 18<sup>th</sup> May and 18<sup>th</sup> June) have already been offered. Members were provided with a pack containing copies of the new model Code, a comparison between the old code and the new model code (attached to this report, for ease of reference, as **Appendix A**) and the Standards Board's Guidance on the new code. Once this meeting has approved a new Code of Conduct for members of this Council, it will be supplied to every Member with the newly-published Standards Board booklet.

## The Issues

4. Although the new Code follows the same basic structure as the 2000 Code, there are some important differences. Members will note that an effort has been made to put the new model Code into plainer English: for example, it is now addressed to "you" as a member, instead of saying "a member must....". Some of the provisions are re-written or re-ordered for clarity but essentially mean the same.
5. Other rules have been re-defined: for example,
  - The general conduct rules in paragraph 3 are extended specifically to prohibit bullying, and intimidation or victimisation of witnesses in Standards complaints;
  - The definition of a personal interest is now contained wholly in paragraph 8, instead of having to cross-refer to paragraphs 14 and 15;
  - There is some relaxation of the provisions about when you need to declare a personal interest, in paragraph 9. In particular, if your personal interest includes sensitive information - defined as information which if disclosed would lead to a risk of violence or intimidation - you don't have to disclose the sensitive information, but you must still declare the personal interest;
  - The definition of a prejudicial interest has not changed but the Government has sought to clarify the exceptions, in paragraphs 10(2) and 11;

- If you do have a prejudicial interest, but in furtherance of your community representation role you wish to make representations to a committee, or answer questions or give evidence, you may under the new Code do so, *provided* that members of the public are entitled under the Council's procedures to do the same. You may not, though, participate in the decision; once you have said your piece you must leave the room (unlike members of the public, who may stay);
  - The rule imposing a duty on members to report other members who are in breach of the Code has been abolished.
6. Following the *Livingstone* judgment of the High Court, the Code now only applies when you are acting in your official capacity, unless by your conduct you are also committing a criminal offence. The Local Government and Public Involvement in Health Bill contains draft provisions to extend the Code to any acts by a councillor, whether official or not. We may need to look at the Code again once the bill is enacted.

### **Possible Additions to the Model Code**

7. All of the provisions of the new Code are mandatory for District Councils, which of course means that they cannot be altered or deleted, but we can consider whether additional provisions applying only in the South Hams could be inserted. The following have been suggested by Bevan Brittan, solicitors, who have provided advice to local authorities on the new Code:
- 7.1 applying the rules on disclosure of interests and withdrawal not only to formal meetings of the Council and its committees but also to informal meetings and working parties. The means of doing this would be to add another sub-clause to paragraph 1(4) of the model code, as follows:
- “(d) informal meetings with other members or officers or both relating to the discharge of the authority’s functions”.*
- The advantage of doing that is increased transparency. Members of the public would be confident that no councillor with a prejudicial interest in a matter under consideration had been able to have undue influence, in private, on the proposals. One disadvantage is that it may, depending of course on the extent of prejudicial interests at any time, handicap discussions when they are at their earliest stages and thereby prevent the fullest consideration of views. It would also be quite difficult to police.
- 7.2 The addition of a provision in paragraph 3 of the Code that members *“should not provide or offer to provide a reference for any candidate for appointment or promotion as an officer of the authority”.*
- Officers are required to be appointed or promoted on merit. Preventing members from providing references would remove any suggestion of bias.
- 7.3 Extend the range of paragraph 6(b) of the Code so that it applies not only when using or authorising the use by others of the resources of the authority, but also the use *“of resources which are or whose use is controlled or influenced by the authority”.*

This is intended to apply to members who are in positions such as directorships of companies controlled or influenced by the local authority. This provision would put beyond doubt the question that they must abide by the Code when so acting.

7.4 Re-write and extend paragraph 7 (1) to read as follows:

*“When reaching decision on any matter you must –*

- (a) do so on the basis of the merits of the circumstances and in the public interest;*
- (b) have regard to any advice provided to you by the authority’s officers – in particular by*
  - (i) the Strategic Director for Resources (the s. 151 Officer) especially where that officer is acting pursuant to his or her statutory duties;*
  - (ii) the Monitoring Officer, especially where that officer is acting pursuant to his or her statutory duties;*
  - (iii) the solicitor to the Council, who should be consulted whenever there is any doubt as to the authority’s power to act, or as to whether the action proposed lies within the policy framework agreed by the authority, or where the legal consequences of action or failure to act by the authority might have important repercussions”.*

This adds a new sub-paragraph in (a) and extends the requirement to have regard to the advice not only of the statutory officers but also the solicitor. Naturally those officers here consider that this suggestion has merit; it would significantly reduce the risk of improper decision-making and thus the likelihood of challenge.

Members are invited to consider which, if any, of these additions to include as local variations in the new South Hams Members’ Code. Attached at **Appendix B** is a version of the model Code that it is recommended should be adopted, including (highlighted) the local variations described above.

## **New Registrations of Interest**

8. The Standards Board for England advise that Members who have already made their declaration of acceptance of office need not make a fresh declaration, because your undertaking was to “to observe the code as to the conduct which is expected of members” of South Hams District Council, and this applies equally to the new Code. But each of you will have to register a new declaration of interests because there are no transitional provisions to carry your May 2007 registrations under the old Code forward, and paragraph 13 of the new Code says that you must register a declaration of interest within 28 days of the new Code being adopted (that is to say by 26<sup>th</sup> July). The Monitoring Officer will devise and circulate a simple form for use where there is no change in your interests.

## **Risk Assessment**

Risk	Mitigation
That the new Code of Conduct is not adopted	The default position is that it will be imposed on 1 <sup>st</sup> October, but if members wish to include some local provisions that must be done by specific resolution today

Risk	Mitigation
That members remain unaware of the new provisions	Training has already been offered to all members. The monitoring officer and his staff remain available to advise members on a personal basis as issues present themselves

**Conclusion**

Members are required to pass a resolution to adopt the new Code of Conduct, with or without local additions as outlined above.

Delyth Jenkins Evans  
Principal Solicitor and Deputy Monitoring Officer

Kevin Williams,  
Head of Corporate Services and Monitoring Officer

**Background Documents:**

Constitution of South Hams District Council

Local Government Act 2000, s.51

The Local Authorities (Model Code of Conduct) Order 2007

Advice and Commentary provided by Messrs Bevan Brittan, Solicitors April 2007

Guidance supplied by the Standards Board for England

Reference T:\Agenda\Council\2007-2008\28June 2007\Rep to Council on new Code of Conduct 2007.doc

**SOUTH HAMS DISTRICT COUNCIL**  
**CODE OF CONDUCT FOR MEMBERS (2007)**

1. (1) This Code applies to **you** as a member of an authority.

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

(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;

*(d) informal meetings with other members or officers or both relating to the discharge of the authority's functions*

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

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.

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;

*(e) provide or offer to provide a reference for any candidate for appointment or promotion as an officer of the 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 *or resources which are or whose use is controlled or influenced by the 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.

Alternate provision (see para 7.4 of the report) to replace 7(1) above:

*7.1 "When reaching decision on any matter you must –*

*(a) do so on the basis of the merits of the circumstances and in the public interest;*

*(b) have regard to any advice provided to you by the authority's officers – in particular by –*

*(i) the Strategic Director for Resources (the s. 151 Officer) especially where that officer is acting pursuant to his or her statutory duties;*

*(ii) the Monitoring Officer, especially where that officer is acting pursuant to his or her statutory duties;*

*(iii) the solicitor to the Council, who should be consulted whenever there is any doubt as to the authority's power to act, or as to whether the action proposed lies within the policy framework agreed by the authority, or where the legal consequences of action or failure to act by the authority might have important repercussions".*

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

### **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;

(ii) [Greater London Authority] or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(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).

**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.

### **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.