



AGENDA ITEM: 5

**STANDARDS COMMITTEE:
26 April 2007**

**ANNUAL COUNCIL:
16 May 2007**

Report of: Council Secretary and Solicitor

Contact for further information: Mrs G L Rowe (Ext 5004)

SUBJECT: NEW CODE OF CONDUCT – WEST LANCASHIRE DISTRICT COUNCIL

District wide interest

1.0 PURPOSE OF THE REPORT

- 1.1 To consider the adoption of a code as regards the conduct which is expected of members and co-opted members of the Council.

2.0 RECOMMENDATIONS TO STANDARDS COMMITTEE

- 2.1 That the Recommendations to the Council set out at 3.1 below be agreed.

3.0 RECOMMENDATIONS TO COUNCIL FROM THE STANDARDS COMMITTEE

- 3.1 That the Council adopt the Code as regards the conduct which is expected of members and co-opted members of the Council as set out in Appendix 2 attached, in place of the existing Code of Conduct from 16 May 2007.
- 3.2 That the Code of Conduct be made available for public inspection, a notice be placed in the Advertiser, and the Standards Board be notified as required by the Local Government Act 2000.
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4.0 BACKGROUND

- 4.1 The Local Government Act 2000 (the Act) provided a new statutory framework governing the conduct of elected members and co-opted members of “relevant” local authorities. The Codes of Conduct replaced the National Code of Local Government Conduct. They were one element of the new ethical framework for local government introduced by Part III of the Act.
- 4.2 Members will recall my earlier report on the consultation paper on the revised Code of Conduct which was considered by Council on the 28 February 2007. The DCLG have taken into account the responses to the consultation paper in determining the new Code which was laid before Parliament on the 4 April and comes into force on 3 May 2007. Members will find at Appendix 1 to this report details of the amendments made.

5.0 CURRENT POSITION

- 5.1 Every Authority has to adopt its own Code of Conduct by the 1 October 2007, six months after the revised Model Code of Conduct was made (2 April 2007). However, the Standards Board is strongly recommending Councils adopt the revised code at the earliest opportunity. The Council's own Code must contain the mandatory provisions set out in the Model Code of Conduct and once adopted the Standards Board must be advised that it has been adopted unamended and of the date of adoption or if it is adopted in amended form a copy must be sent to the Standards Board. The Act also contains provisions in relation to making the Code available for public inspection and advertising by public notice that the Code has been adopted and that it is available for inspection.
- 5.2 Attached as Appendix 2 is a copy of the Code I would recommend for West Lancashire District Council. This follows the Model Code and the suggestion from the Standards Board that the Council does not adopt additional provisions in its local code. It is to be noted that the Council may adopt additional provisions as long as they are consistent with the Model Code but the Standards Board is concerned that a wide range of different local codes may cause confusion to local people and those who serve on more than one Authority.
- 5.3 I have included as an Annex to the Code the ten general principles as recommended by the Standards Board to remind Members and the public of the principles underlying the Code.

6.0 SUSTAINABILITY IMPLICATIONS

- 6.1 The introduction of a new Code of Conduct will promote high standards of propriety which encourages involvement in local government.

7.0 FINANCIAL AND RESOURCE IMPLICATIONS

- 7.1 The costs of introducing the New Code at District level will be met from existing resources, as will the costs of training on its provisions. Members will recall the session held at Edge Hill on 29 March and all District Members will receive a copy of the updated pack. Induction Training for new Councillors will include training on the New Code.
- 7.2 The costs of establishing the necessary Registers under the New Code are also being borne from existing resources.
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Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

Equality Impact Assessment

There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

Appendices

1. Amendments to the Code of Conduct
2. Constitution 16.1 - Code of Conduct for West Lancashire District Council

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AMENDMENTS TO THE CODE OF CONDUCT

1. THE NEW CODE OF CONDUCT

1.1 Who does the model code apply to?

The model code of conduct places a specific responsibility upon members and co-opted and appointed members to comply with it.

1.2 When does the model code of conduct apply?

The model code of conduct applies to members when they act in their official capacity. However there is an exception to this. The paragraphs of the code preventing a member intimidating witnesses, complainants or persons involved in the administration of an investigation about a breach of the code, behaving disreputably and improperly using their position to confer an advantage or disadvantage, apply to the conduct of a member acting in their private capacity but only where the conduct constitutes a criminal offence for which the member has been convicted.

“Official capacity” is described as conducting the business of the authority or office to which that member has been elected or appointed, or acting or claiming to act or giving the impression that they are acting as a representative of the authority.

1.3 Does “conduct” include a criminal offence for which a member is convicted?

Yes. The code provides that the conduct to which the code applies includes a criminal offence for which a member is convicted, and includes an offence committed before that member took office as a councillor, but is convicted after that date.

1.4 General obligations - What has changed?

A. Discrimination:

Previously there was a duty not to discriminate unlawfully. This no longer exists and there is now a duty not to do anything which may cause the authority to breach any of the equality enactments.

B. Bullying:

A new provision, which places a duty on members not to bully any person.

C. Intimidation:

A new provision preventing a member from intimidating, or attempting to intimidate, a complainant, witness, or person “involved in the administration of

any investigation or proceedings”, in relation to a complaint that a member (the member concerned or any other member) has breached the code of conduct.

D. Confidentiality:

The categories in which it may be acceptable to disclose confidential information have been extended, and now include:

- Disclosure made on a confidential basis to a third party for the purpose of obtaining professional advice;
- Disclosure is reasonable and in the public interest, made in good faith and complies with any reasonable requirements of the authority.

E. Authority’s resources:

A new provision requiring members to ensure they do not use the authority’s resources for political purposes including party political purposes.

F. Code of Publicity:

A new provision requiring members to have regard to the Local Authority Code of Publicity under the Local Government Act 1986. This does not apply to police authorities, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, fire and rescue authorities and joint authorities.

G. Regard to advice:

Rewording of the requirement to have regard to the advice of the chief finance officer or the monitoring officer when they are carrying out their statutory duties, not just when making a formal report to Council. This does not apply to parish councils.

H. Reasons for Decisions:

Rewording of the requirement to give reasons for all decisions in accordance with statutory requirements and the authority’s reasonable requirements. This does not apply to parish councils.

I. Whistleblowing:

There is no longer duty on members to make a complaint about a breach of the code of conduct by another member.

1.5 Interests - What has changed?

A. Personal interests:

As before, there are two ways in which a member has a personal interest, although there are some significant differences:

- i) A member will have a personal interest if the business of the authority relates to or is likely to affect one or more interests which are listed. These interests are also registrable and have been moved into this part of the code. The list now includes “the interests of any person from whom a member has received a gift or hospitality over the value of £25”. Some of the wording is slightly different from the old code.
- ii) There is a significant change to the well-being test: a decision concerning the business of the authority might be regarded as affecting the well-being or financial position of the member or others to a greater extent than the majority of:
 - For authorities with wards or electoral divisions – other council tax and rate payers or inhabitants of the ward or electoral division affected by the decision;
 - For all other cases - other council tax and rate payers or inhabitants of the authority’s area

The “others” referred to includes:

- A member of the family (replacing “relative” in the old code) or any person with whom the member has a close association (replacing “friend” in the old code);
- Any person or body who employs or appointed these persons, any firm in which they are a partner or company of which they are directors;
- Any person or body in whom these persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000 (instead of £5,000);
- Any body of the type described in the list.

B. Disclosure of personal interests:

There is still a requirement to declare the existence and nature of the interest before the business is considered or when the interest becomes apparent, and only when you are aware or ought to be aware of the existence of the interest. However, there are some exceptions to this general rule, which are:

- If a personal interest arises because the business relates to, or is likely to affect, a body to which the member was appointed or nominated by the authority, or a body exercising functions of a public nature and that member is a member of the body or holds a position of general control or management, the member need only declare the existence and nature of the interest when addressing the meeting on that business;
- If an interest arises because the business relates to, or is likely to affect, the interests of a person from whom the member has received a gift or hospitality over £25, the interest does not have to be

declared if it was registered more than three years before the date of the meeting;

- If a member has a personal interest but sensitive information (see below) relating to it is not registered, the member need only declare that a personal interest exists and is not required to disclose the sensitive nature of it.

C. Prejudicial interests:

The definition of a prejudicial interest has not changed. However, in another significant change, the code sets out the circumstances in which a member will not have a prejudicial interest, which are:

The business in which the interest arises:

- does not affect the member's financial position or the financial position of those persons or bodies whose interest gives the member a personal interest;
- does not relate to determination of any approval, consent licence, permission or registration concerning the member or those persons or bodies whose interest gives the member a personal interest; or
- relates to certain specified functions of the authority including housing, school meals and transport, allowances, payments or indemnities to members, ceremonial honours to members, and setting council tax or precept.

D. Prejudicial interests and overview and scrutiny committees:

The wording is clearer than in the old code, so that a prejudicial interest arises where the committee is considering a decision or action of the executive or committee or joint committee of which the member is a member, and the member was present when the decision was made or action taken.

E. Participation:

A member must still withdraw from the room during consideration of the business in which the prejudicial interest arises, and must not seek to improperly influence a decision about that business. However, the new code allows a member to give evidence, answer questions or make representations to the meeting where the public are allowed to do so, but the member must then immediately withdraw from the room. This is another very significant change.

F. Registration of interests:

The list of interests which need to be registered are no longer set out in a separate paragraph. The list is set out in the personal interests' part of the code. The differences are:

- “Public authority” has been removed and replaced with “any body exercising functions of a public nature”.
- “Company, industrial and provident society, charity” have been removed and replaced with “any body directed to charitable purposes”.
- A body whose principal purposes include the influence of public opinion or policy now specifically includes a political party or trade union.
- “Professional association” has been removed although may be considered to be a body whose principal purposes include the influence of public opinion or policy.
- There is no specific requirement to register the address of land rented from the Council or owned or licensed, although members may be expected to provide sufficient detail so as to identify its location.
- The registration of gifts and hospitality will now form part of the public register of interests. The actual wording requires the interests of any person who has given the gift or hospitality to be registered. As this cannot be the intention of the provision, we assume that members will only be required to register the gifts and hospitality received, as they have already been doing under the old code, and that the Standards Board for England will not take action for not complying with the exact wording of this requirement.

Members must give notification of any new interests or changes to their interests.

If disclosing information about an interest would be likely to create a serious risk of violence or intimidation to the member or a person who lives with that member, and the Monitoring Officer agrees, the member may hold that “sensitive information” back from the register.

2. DIFFERENCES BETWEEN THE DRAFT AND THE NEW CODES OF CONDUCT FOR MEMBERS

- 2.1 The new code refers to “you” throughout making it easier to read and understand. The new code also places specific responsibility on a member to comply with the code.
- 2.2 The general principles set out in The Relevant Authorities (General Principles) Order 2001 are referred to in the new code but are not incorporated into it; the new code advises members to read the general principles together with the code.
- 2.3 The draft code provided that the paragraphs prohibiting (a) intimidation of witnesses, complaints and those involved in the administration of an investigation concerning a breach of the code, (b) disreputable behaviour and (c) the improper use of position to an advantage or disadvantage, would apply when a member was acting in an official capacity or in any other circumstances. During the consultation on the draft code, support was received

for these paragraphs to only apply to a member's private conduct for which a criminal conviction was received. The new code therefore restricts the application of the code in respect of conduct in a private capacity to conduct for which a criminal conviction has been received.

- 2.4 The definition of "acting in an official capacity" now includes claiming to act, or giving the impression of acting, as a representative of the Council.
- 2.5 The new code has clearer wording, requiring members not to do anything which may "cause their authority to breach" any of the equality enactments rather than referring to "seriously prejudicing" its ability to comply with them.
- 2.6 There is a new provision allowing members to disclose confidential information to a third party (for example a solicitor) for the purposes of obtaining professional advice, provided the third party agrees not to disclose the information.
- 2.7 The duty to have regard to advice given by the monitoring officer and chief finance officer only applies when they are discharging their statutory duties. This takes the Code more or less back to the original wording. This is not relevant for parishes.
- 2.8 There are slight differences in the wording of the paragraph about personal interests, making it a little easier to understand.
- 2.9 The draft code provided that a personal interest arising due to the receipt of gifts or hospitality did not need to be declared if it had been registered more than 5 years before the meeting. Following consultation, this period has been reduced to 3 years.
- 2.10 Under the code, if you have a connection with someone whose well-being is affected, you will have a personal interest. There is a list of people with whom there would be a connection of this kind. There are two changes to this list. First, the draft code referred to someone with "a close personal association" with a member. Support was received during the consultation to change this wording to ensure that business associates as well as personal friends are included. The new code therefore refers to "close association".
- 2.11 Secondly, previous versions of the code referred to a company or the like in which a member had shares or other securities whose nominal value was more than £5,000. The threshold has now been lifted to £25,000. This means that you will have to have quite a large shareholding before a matter that affects the company's well being gives you a personal interest.
- 2.12 The draft code referred to a "public service interest". Following the consultation, the separate definition of public service interest has been deleted. The responses to the consultation indicated that the more relaxed regime for members with a public service interest should be extended to all members. Therefore, the new code provides that a member does not have a prejudicial interest if the matter being considered:

- does not affect the member's financial position or that of his family, any person with whom the member has a close association, or other persons or bodies listed in paragraph 8, and
- does not relate to the determining of any approval, consent, licence, permission or registration in relation to the member, their family, their close associate or other persons or bodies listed in paragraph 8.

2.13 The draft code said that members would not have a prejudicial interest in decisions to make someone a freeman. This has now been extended to all ceremonial honours.

2.14 The responses to the consultation on the new code concerning members with prejudicial interests being able to make representations, give evidence or answer questions and then withdraw from the room indicated that members with a prejudicial interest should only be able to speak to the meeting, answer questions and give evidence where the public had the right to do so. The wording was changed in the new code, allowing members to only make representations, give evidence or answer questions, at a meeting and before withdrawing from the room, where members of the public have the right to do so. In addition, there is now no need for the meeting to give its consent.