

# Decision-making and probity

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LGTP

1<sup>st</sup> and 8<sup>th</sup> November 2007

# Three sections

1. The new Model Code of Conduct
2. Devolution to Standards Committees
3. Issues arising on implementation

# 1. Revised Model Code

- Revised Code in force, 3 May 2007
- Use of “you”
- Does not apply to authorities as whole, nor to officers or employees
- Authorities had until 1 Oct 07 to adopt
- Members automatically covered by it from that date

# Application

- Applies to all members and co-opted members of local authorities
- Applies when “you” conduct business of authority, or “claim to act or give the impression you are acting” in official capacity or as authorised representative.
- Future amendment likely to deal with criminal behaviour – more later.

# General obligations

- Treating others with respect – 3(1)
- Not causing authority to breach equality and discrimination laws - 3(2)(a)
- Bullying – 3(2)(b)
- Intimidation of others involved in conduct process – 3(2)(c)
- Compromising impartiality of officers – 3(2)(d)

# General obligations (cont)

- Preventing access to information – 4(b)
- Members using their position improperly – 6(a)
- Using resources for proper uses only - 6(b)
- Considering advice provided, and giving reasons – 7(1) and 7(2)
- Having regard to LA Code of Publicity – 6(c)

# Confidential information – 4(a)

- Members must not disclose confidential information except where:
- They have the consent of the person authorised to give it;
- They are required by law to disclose it
- Disclosure is to 3<sup>rd</sup> party for professional advice, if advisor agrees not to disclose, or -

# Confidential information (cont)

- Disclosure is:
  - reasonable
  - in the public interest
  - made in good faith
  - in compliance with r. requirements of authority
- Confidential info = given to Cllr, or acquired by him/her, which Cllr believes (or ought reasonably to be aware) is of confidential nature



# Disrepute and private conduct

- Not to conduct yourself in manner which could reasonably be regarded as bringing office or authority into disrepute
- Bill (if approved) will partially reinstate the pre-Livingstone position, so Code applies to conduct in private capacity in 3 respects - 2(2)-2(4). Code likely to change from current wording.
- Code does not currently apply outside performance of functions

# Criminal conduct covered

- A principle is within this subsection if it prohibits particular conduct (or conduct of a particular description) where that conduct would constitute a criminal offence.
- “An investigation should be deferred when there are ongoing criminal proceedings, a police investigation into the member’s conduct, and we cannot proceed without investigating similar alleged conduct or needing to come to conclusions of fact about events which are also the subject of some other investigation or court process”.

Current SB Guidance

# Disrepute (cont)

- Test is not whether the action caused controversy
- But whether a member of the public, with the same knowledge as the member, would say that the action at the time was so flawed as to be likely to bring the Member's office into disrepute

# LGPIH Bill

- The 3 respects are:
  - Intimidation – 3(2)(c)
  - Disrepute – 5
  - Conferring or securing an advantage; or disadvantage – 6(a)
- where criminal conduct would have led to conviction (not as per current Code)
- includes offences committed before taking office, but which led to conviction afterwards

# Personal Interests – 8 & 9

- Member has personal interest where the matter:
- relates to, or is likely to affect, an interest they must register – 8(1)(a), or
- Affects the well-being or financial position of member, family, or close associates [“relevant person”], *more than would affect majority of people in ward affected by the decision* – 8(1)(b)

# What must Member register?

- As before, plus gift or hospitality of estimated value of at least £25

# Gifts and hospitality

- Source of gift must be registered, within 28 days of receiving it
- Members have personal interest in a matter that is likely to affect the source of their gift
- After 3 years, obligation to disclose at meetings ceases

# What must Member do when has a personal interest?

- If member declares a personal interest they can remain in the meeting, speak and vote on the matter – unless interest is also prejudicial – 9(1)
- Applies when you are, or ought reasonably to be, aware of the interest – 9(4)
- Executive decision: ensure written statement records the interest – 9(6)



# Exemptions to rule on declaring personal interests

- Where the interest arises solely from a member's membership of, or position of control or management on:
  - a body to which are appointed or nominated by the authority
  - any other body exercising functions of a public nature (eg another local authority)....

# Exemptions to rule on declaring personal interests (cont)

- .....provided the member does not have a prejudicial interest, they only need to declare their interest if they speak – 9(2)
- If the member does not want to speak to the meeting, they may still vote on the matter without making a declaration

# Prejudicial interests - 10

- A personal interest is also prejudicial if all of the following conditions are met:
- A member of the public who knows the relevant facts would reasonably think the personal interest is so significant that it is likely to prejudice the member's judgement of the public interest – 10(1)  
AND
- The matter does NOT fall within one of the exempt categories of decisions under paragraph 10(2)(c) AND

# Prejudicial interests (cont)

- The matter affects the member or a relevant person or body's financial affairs – 10 (2)(a)  
AND/OR
- The matter relates to the determining of any approval, consent, licence, permission or registration that affects the member, a relevant person or body – 10(2)(b)

# Exempt categories of decisions

- Exempt categories in para 10(2)(c):
- Housing, where tenant (unless relate particularly to your tenancy or lease)
- School meals or transport/expenses, where you are parent or parent governor (unless relates particularly to your child's school)
- Statutory sick pay, which you receive or to which you are entitled

# Exempt categories of decisions (cont)

- Allowance, payment or indemnity to members
- Ceremonial honour given to members
- Setting the Council tax or a precept

# Prejudicial interests and paragraph 12(2) – the new rule

- A member with a prejudicial interest may make representations, answer questions and give evidence before leaving the room, provided that members of the public are allowed to attend for the same purpose

# Why has this been changed?

- increases opportunity to express support or objections
- members have same rights as members of public
- improves transparency
- Effect is to overrule *Richardson* case



# What can member do/not do when have a prejudicial interest?

- Member cannot:
  - exercise executive functions in relation to that business – 12(1)(b)
  - seek improperly to influence a decision about that business – 12(1)(c)
  - stay in the room when the business is being discussed, after speaking if they have been allowed to – 12(1)(a)

(unless has obtained dispensation from St Cttee)

# What can member do/not do when have a prejudicial interest?

- Can:
  - make written representations in their private capacity
  - use a professional representative to act on their behalf
  - ask another member to represent the views of their constituents

# Prejudicial interests and O&S

- You have prejudicial interest in O&S business if it relates to decision or action of executive, Cttee, sub-cttee etc, and you were member and present – para 11
- Member may attend O&S to answer questions, or give evidence on decision, provided public allowed to do so – 12(2)
- If public not allowed to do so? Problem.

# Parish councils and paragraph 12(2)

- Parish councils not covered by para 12(2) if they simply adopt Model Code
- So members will not be able to speak if they have a prejudicial interest
- Parish councils can adopt the Standards Board Model Code for parishes which includes 12(2)
- ie they need to adopt 12(2) specifically

# IMPORTANCE OF GETTING ADVICE RIGHT

- May give rise to challenge if Councillors withdraw incorrectly, see *Ware v. Neath Port Talbot* [2007] EWHC 913 (Admin)
- On appeal to Court of Appeal

# Registration - 13

- Within 28 days of adoption of Code, or your election (if later) you must register interests in 8(1)(a) in writing to Mon Officer
- And within 28 days of becoming aware of new personal interest, or change to registered interest, must notify Mon Officer

# Sensitive Information - 14

- Where Cllr and Mon Officer agree information is sensitive, may omit from register
- If availability for inspection creates, or likely to create, serious risk of violence or intimidation to Cllr or person living with him or her
- Member must indicate personal interest to meeting but need not disclose the sensitive information
- If no longer sensitive, tell Mon Officer within 28 days

# More information on revised Code

- Standards Board guidance at [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)
- Code of Conduct: Guide for Members
- Pocket Guide to Code
- Future guidance and training
- Model Code for parishes and town councils also on website



# Bias and predetermination

- Advice by Philip Sales QC, most particularly on the case of *NAW v Condrón & Anr* [2006] EWCA Civ 1573
- Objective standard & to be judged on basis of all information known to Court (i.e. likely wider than that of any complainant)
- Standards Board website

# Conclusion on Code

- Changes to Code to remove barriers to councillors speaking up for constituents, or public bodies to which appointed, on planning matters
- Significant easing of constraints from Code
- Bias/predetermination rules
- Planning Guidance

## 2. Devolution to Standards Committees

- Bill in final stages.
- Not particularly controversial
- No guidance as to operation yet, yet specific provision is made for the Standards Board to issue such guidance.

# 1. Introduction: local determination of standards

- Context: White Paper: “Strong and Prosperous Communities”, 26<sup>th</sup> Oct 2006.
- Section 3: Effective and Accountable and Responsive Local Government, proposed:
- Establishing a new locally-based conduct regime
- Streamlined Standards Board to be “light touch regulator”
- Revised Code of Conduct

## 2. Local determination of standards

- Introduced 12<sup>th</sup> Dec 2006. Now completed passage.
- Ethics now Part 10, Chapter 1 (Clauses 184-200)
- New s 57A, LGA 2000: individual Standards Committees to undertake current role of Standards Board of conducting initial assessment of allegations of misconduct

## 2. Local determination of standards

- Standards Committees to have 3 courses of action in respect of an allegation:
  - a) refer to MO for consideration
  - b) refer to Standards Board
  - c) take no action
- Right to request a review of decision not to act (s. 57B)

## 2. Local determination of standards

- S 53(4), LGA 2000: amend to provide that Standards Cttees should be chaired by a person who is neither a member nor officer of a relevant authority (clause 186)

# ISSUES ON IMPLEMENTATION

- Timing – implementation by Order
- Personnel – sufficient resources?
- Training – Councillors & Officers