

**Cheltenham Borough Council**  
**Standards Committee - 25th May 2007**  
**The Revised Members Code of Conduct**  
**Report of the Borough Solicitor**

**1. Executive Summary and recommendation**

- 1.1** The Government has now published a revised Code of Conduct for Members. The revised Code of Conduct came into force on 3<sup>rd</sup> May 2007. Every local authority must adopt the revised Code of Conduct (with or without local additions) by resolution of Council within 6 months of the date on which it came into force, (which was 2nd April 2007), i.e. on or before 1<sup>st</sup> October 2007. Where an authority fails to adopt the revised Code of Conduct by that date, the mandatory provisions of the revised Code of Conduct apply automatically, until the authority adopts the revised Code of Conduct.
- 1.2** The new model code is designed to be capable of application to all types of authority and it achieves this by comprising mandatory and optional provisions. Authorities must include the mandatory options and may include the relevant optional provisions should they opt to do so. In addition authorities are empowered to add provisions to the codes they adopt.
- 1.3** The Standards Committee is asked to consider the attached draft codes, one for Cheltenham Borough and the other version for use by the parishes within the borough, for which the Standards Committee has jurisdiction, and make recommendations as to their adoption and any amendments which are considered appropriate.
- 1.4 I therefore recommend that:**
- 1.4.1 The Standards Committee approves the draft code for Cheltenham BC in the form attached to this report and recommends to Council that it adopt this draft Code as the new Members' Code of Conduct for Cheltenham Borough Council to take effect from the 1<sup>st</sup> October 2007.**
- 1.4.2 That the Monitoring Officer is instructed to report this decision and recommendation to full Council at the earliest opportunity.**
- 1.4.3 The Standards Committee approves the draft code for adoption by the 5 parishes within the borough of Cheltenham and instructs the Monitoring Officer to write to the five parishes enclosing a copy of the recommended version of the code.**

## **1.5 Summary of implications (note to author - cross reference to body of report where applicable)**

**1.5.1 Financial**                      There are no financial implications arising from this report.

**1.5.2 Legal**                              S.50 LGA 2000 provides that the Secretary of State may, by order, issue a model code as regards the conduct which is expected of members and co-opted members of relevant authorities in England. Pursuant to this power a revised model code was issued by order made on 2<sup>nd</sup> April 2007.

S.51(2) LGA 2000 requires all relevant authorities, before the end of the period of 6 months beginning with the day on which the order is made, to pass a resolution adopting the code in place of their existing code. In default of compliance with this duty all mandatory elements of any model code apply automatically.

S.51(4) requires that any code adopted by an authority must incorporate any mandatory provisions and may include any optional provisions. Additionally, S.51(4)(c) provides for the inclusion, by the authority, of other provisions which are consistent with that model code.

S.51(6) imposes certain requirements for publicising and making the code available for inspection by the public and to send a copy to the Standards Board for England.

**1.5.3 Human Resources**              None arising from this report.

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## **2. Summary of Changes to the Model Code**

**2.1**      Although the revised Code of Conduct follows the same broad structure as the old Code of Conduct, it makes substantial changes including those listed below:-

- a. 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, as yet, this hasn't come onto the statute books and may require significant further re-drafting. In effect the application of this part of the code is suspended until the bill becomes law.
- b. 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.

- c. The provisions 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.
- d. The scope of what constitutes a Prejudicial Interest is narrowed in the new Code by the inclusion of an additional qualification which provides that to be Prejudicial an interest must either:-
  - I. Affect the **financial** position of the Member, person or body (as opposed to its well being), or
  - II. Relate to a licensing or regulatory matter relating to the Member, person or body.

### **3. Applying the Code to Different Authorities**

**3.1** Rather than providing different Codes of Conduct for different types of authority, this time the Department for Communities and local Government has prescribed a single mandatory composite Code of Conduct, and then provided that particular paragraphs of the Model Code shall not be mandatory for particular types of authority. Each authority must adopt all of the mandatory provisions, may adopt any of the optional provisions, and may also add to the model text provided that any such additions are compatible with the mandatory provisions<sup>1</sup>.

**3.2** The position is simplest in respect of local authorities such as Cheltenham which operate executive arrangements and have overview & scrutiny committees, and in these authorities the provisions of the model code are all mandatory provisions. The attached draft code for Cheltenham, (Appendix 'A'), reproduces the entire text of the Model code and contains very limited amendments highlighted as tracked changes. These amendments consist of additions to the code the rationale for the inclusion of which is as follows:-

- I. The preamble consists of the general principals as set out in the Relevant Authorities (General Principles) Order 2001. It is appropriate to include these as a reminder of their existence although they cannot be cited to found a complaint to the Standards Board.
- II. The inclusion of an additional paragraph 1(4)(d) extends the definition of 'meeting' to include informal meetings of the council which, it is argued, are not covered by the model definition. For instance, it is argued that a working group would not be covered by the existing definition and whilst this may not be the intention there is scope for argument. The inclusion of the additional words puts this beyond doubt
- III. The replacement paragraph 3(3) clarifies that a Member of the authority

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<sup>1</sup> S.51(4) LGA 2000

should not provide a reference for any appointment or promotion of an officer within the authority. The wording it replaces is of relevance only to police authorities.

IV. The additional wording included after paragraph 4 specifies a minimum requirement on any Member intending to disclose confidential information.

**3.3** Members of the Standards Committee are asked to consider these amendments to the model code with a view to recommending them for adoption to Full Council.

**3.4** Regarding parishes the model code contains a number of optional provisions and requires some slight amendment to reflect the fact that they do not operate executive arrangements nor do they have overview and scrutiny committees. I have attached a suitably amended version of the model code, (Appendix 'B'), which contains the amendments in red and annotations highlighting the parts which are optional.

#### **4. Process to Adoption**

**4.1** Following consideration by the Standards Committee of the two draft versions of the code I shall report the conclusions on the borough version to full council on the 28<sup>th</sup> June. As regards the parish council version I shall write to each parish council setting out the conclusions of the Standards Committee and enclosing a copy of the version as approved. It is a matter for the parishes as to when they intend to report this to an appropriate meeting for consideration.

#### **5. Procedure After Adoption**

**5.1** Once the Council adopt the Code it is necessary to publish this in a local newspaper, make the Code available for inspection at the Council's offices, and send a copy to the Standards Board. The Code will be published on the Council's website. Under Section 52 of the 2000 Act once the Code of Conduct has been adopted by the Council, all Members, elected and co-opted, have two months to sign up to the Code, giving a written undertaking they will comply with the Code. If they do not they are automatically disbarred from being a Member of the Council.

**5.2** In addition to the legal requirements mentioned above Members will be supplied with hard copies of the code and invited to training sessions explaining the new provisions. Training sessions are proposed to be held for both the Borough Council and Parish Councils towards the end of June or beginning of July depending upon room availability.

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#### **Background Papers**

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**Accountability** N/A

**Scrutiny Function** N/A