

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL

REPORT TO: Council

26 April 2007

AUTHOR/S: Chief Executive / Deputy Monitoring Officer

REVISED CODE OF CONDUCT

Purpose

1. To adopt the revised Code of Conduct for inclusion into the SCDC Constitution with effect from 3 May 2007.

Background

2. The Local Authorities (Model Code of Conduct) Order 2007 was laid before Parliament on 4 April 2007 and comes into force on 3 May 2007. It has effect as the model code issued by the Secretary of State under section 50 of the Local Government Act 2000 as regards the conduct which is expected of members and co-opted members of an authority. The same code will now apply to district and parish councillors.
3. It would be most efficient to adopt the revised Code on 26 April 2007, with effect from 3 May 2007, ensuring that the revised Code would be in place on Election day and all new and returning District Councillors would agree to its provisions when signing their Acceptance of Office.
4. The Standards Board for England confirms that all other District Councillors will have signed up to the Code automatically when it is adopted by the Council by virtue of signing their Declaration of Acceptance of Office upon election. This declaration states that, "I undertake to observe the code as to the conduct which is expected of members of South Cambridgeshire District Council".
5. The Model Code of Conduct is issued following a consultation on the draft code by the Government which ended on 9 March. The Standards Committee, after inviting comments from all councillors, sent a fully considered response to the consultation paper.
6. The main amendments to the draft code following the consultation can be summarised as follows:
 - (a) References to "the member" and "him and her" in the Code have been replaced with "you" throughout
 - (b) The provision that a member must promote equality by not discriminating unlawfully against any person has been replaced with a provision proscribing members from doing anything that would cause the authority to breach any equality enactments (paragraph 3(2)[a])
 - (c) References to "public service interests" have been deleted and more relaxed provisions on prejudicial interest have been extended to all members (ie. so no member has a prejudicial interest unless a financial benefit to the member, his or her family or those with a close association with him or her is involved,

or if the matter relates to the determining of any approval, consent or licence in relation to the member, his or her family or those with a close association with the member)

- (d) Members with a prejudicial interest are allowed the same right to attend meetings to make representations, give evidence or answer questions as the general public. They will be allowed to attend and speak at meetings provided the public are also allowed to attend for the same purpose
- (e) The drafting has been amended to ensure that the remit of the code in respect of conduct in a private capacity is restricted to behaviour for which a criminal conviction has been received
- (f) The rules of gifts and hospitality have been amended to respond to concerns on proportionality so that only gifts and hospitality received in the previous 3 years (rather than the 5 years originally proposed) would have to be disclosed at meetings as personal interests
- (g) References to people with a “close personal association” with the member have been amended to read “close association” to allow the inclusion of business acquaintances as well as personal friends of the member

7. Following these amendments to the draft the new Model Code of Conduct will differ from the existing Code of Conduct in the following key ways:

- (a) Paragraph 2 (1) now indicates that a member must comply with the Code whenever he or she is conducting the business of the authority in question or acts, claims to act or gives the impressions of acting as a representative of the authority. This is following the judgement in the Livingstone v Adjudication Panel for England [2006] case which raised issues surrounding the proper scope of the 2001 Code and in particular its application to conduct outside a member’s official capacity
- (b) The scope of the Code is restricted to official capacity (paragraph 2(2)) except in relation to specified Code provisions constituting criminal conduct for which the member has been convicted. This includes any offence committed before the date the member took office but for which the member was convicted after that date. The provisions specified are in paragraph 3(2)(c), where a member must not intimidate complainants, witnesses or those involved in the administration of any investigation or proceedings, paragraph 5 where a member must not conduct him/herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute and paragraph 6 (a) where a member must not use their position as a member improperly to confer or secure an advantage or disadvantage for him/herself or any other person.
- (c) A specific provision is added that bullying of other members, officers or anyone else is a breach of the Code of Conduct. A definition of bullying is not included in the Code but guidance will be issued by the Standards Board.
- (d) A member may now make a disclosure of information given to him or her in confidence, or which he or she believes to be of a confidential nature, provided the disclosure is in the public interest, in good faith and reasonable and that the member has not breached any reasonable requirements of the

authority. Guidance on how to interpret this will be issued by the Standards Board.

- (e) In paragraph 6 (c) of the new Code Members must now have regard to the Local Authority Code of Publicity made under the Local Government Act 1986. This Code provides instructions about the content, style and distribution of promotional activity and material produced by authorities and is particularly relevant in the period running up to elections.
- (f) The personal interests rules have been simplified in structure and content in Paragraph 8 of the Code as follows:
- (i) A personal interest now arises only where the interest might reasonably be regarded as affecting the member to a greater extent than the majority of other council tax payers, ratepayers or inhabitants *of the ward or division* which is affected by the particular decision. This is a big change from the wording “of the authority’s area” in the existing Code and should allow greater involvement in local decision-making.
 - (ii) The receipt of gifts and hospitality of over £25 in value is now included as an interest that should be registered as a personal interest. The requirement to disclose the personal interest to a meeting ceases after three years following the receipt of the gift or hospitality, although its receipt remains on the register as a personal interest.
 - (iii) Disclosure of a personal interest relating to any body to which the member has been appointed by the authority or any body exercising functions of a public nature need only take place if and when a member wishes to *speak* at a meeting.
 - (iv) The rule on disclosure of interests in respect of a family member or a person with a close association will only apply if the member is aware or ought reasonably to be aware of the interest held by that person.
- (g) The definition of prejudicial interest remains substantially the same at Paragraph 10 (1) as “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). However the prejudicial interests rules have been significantly amended as follows:
- (h) A member will not have a prejudicial interest in any business of the authority where that business does not affect the financial position of the member or the body of which they are a member or does not relate to the grant of any approval, consent, licence, permission or registration in relation to the member or the body of which they are a member(Paragraph 10 (2))
- (i) A prejudicial interest will also not arise where the matter relates to the authority’s functions in respect of:
- the setting of council tax or precepts (so there will be no prejudicial interest because of a member’s connections with an organisation funded from a budget which is being set by the council tax settlement)
 - any ceremonial honour (eg considering whether or not a member should become a freeman of the authority)
 - the granting of an allowance, payment or indemnity

- (j) Where a member does have a prejudicial interest he or she may attend a meeting (including an overview and scrutiny committee meeting) but only for the purposes of making representations, answering questions or giving evidence in relation to the business and provided that the public are also allowed to attend the meeting for the same purpose (Paragraph 12 (2)).
- (k) The previous “whistleblowing” requirement to report other members’ breaches of the Code has now been deleted. A provision has been added to protect members who do report serious misconduct from victimisation at paragraph 3 (2) (c).
- (l) Members now have a duty, when reaching a decision on any matter, to have regard to the advice of the Monitoring Officer and Chief Financial Officer when those officers are acting in accordance with their statutory duties.

Considerations

- 8. The Standards Board for England has advised Monitoring Officers, “To facilitate implementation, ensure consistency across authorities and assist members to understand the revised Code, we strongly recommend councils adopt the revised Code at their first opportunity and without amendment. This will give certainty to members and the public as to what standards are expected, ensure consistency throughout England, and minimise the legal risk of your authority adopting additional provisions which are unenforceable.”
- 9. Every provision of the Model Code is mandatory for this council and although additional provisions can be added, subject to their being consistent with the Model Code of Conduct; no provisions from the Model Code of Conduct may be removed. The Standards Committee, in responding to the Consultation Paper, expressed a strong preference for using the third person (e.g., “the member” and “he / she” rather than “you”) but the Model Code has been issued using “You” throughout. The Government has stated that this change followed the recommendation of the majority of consultation respondents who felt this change of wording would make the Code more “accessible” and “user-friendly”. This could be amended back to the third person if members wish this to happen but may be confusing when reading the Code alongside forthcoming Guidance, which will refer to the Model Code wording.

Options

- 10. Not to adopt the revised Code of Conduct at this time. Adoption of the revised Code is mandatory, but s51 of the 2000 Act says that authorities have 6 months to adopt the Code from the date it was made rather than from it coming into force. As the ‘made’ date on the regulations is 2 April 2007 that therefore means that it will apply automatically if not adopted by 1 October 2007.
- 11. There is nothing to be gained by delaying the adoption of the revised Code and it could lead to confusion with changes occurring mid-year.

Implications

12.	Financial	None
	Legal	Adoption of the revised Code is mandatory
	Staffing	None

Risk Management	Delaying adoption of the Code could lead to confusion as to which Code was in place at any given point during the municipal year.
Equal Opportunities	The Code applies to all members equally and will be available in print and electronic format.

Consultations

13. The Standards Committee considered and responded on the draft revisions to the Code of Conduct at their 22 February 2007 meeting. Part of the Committee's role is to "advise the Council on adoption or revision of the Members' Code of Conduct". A copy of the revised Code of Conduct (Appendix A) was e-mailed to Standards Committee members on 11 April 2007 for comment; no members disagreed with the proposal to ask Council to adopt it on 26 April 2007 with effect from 3 May 2007.

Effect on Annual Priorities and Corporate Objectives

14.	<table border="1"> <tr> <td>Affordable Homes</td> <td rowspan="7">The revised Code has amended the restrictions on Members' participation in issues in which they have an interest, allowing greater representation of the electorate.</td> </tr> <tr> <td>Customer Service</td> </tr> <tr> <td>Northstowe and other growth areas</td> </tr> <tr> <td>Quality, Accessible Services</td> </tr> <tr> <td>Village Life</td> </tr> <tr> <td>Sustainability</td> </tr> <tr> <td>Partnership</td> </tr> </table>	Affordable Homes	The revised Code has amended the restrictions on Members' participation in issues in which they have an interest, allowing greater representation of the electorate.	Customer Service	Northstowe and other growth areas	Quality, Accessible Services	Village Life	Sustainability	Partnership
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Recommendations

15. To adopt the revised Code of Conduct for incorporation into the Council's Constitution with effect from 3 May 2007.

Background Papers: the following background papers were used in the preparation of this report:

SCDC Constitution
The Local Authorities (Model Code of Conduct) Order 2007
The Local Authorities (Model Code of Conduct) (England) Order 2001
Local Government Act 2000

Contact Officer: Fiona McMillan – Deputy Monitoring Officer
Telephone: (01954) 713027