

By: Head of Democratic Services

To: Standards Committee – 6 March 2007

Subject: **PROPOSED NEW CODE OF CONDUCT FOR MEMBERS - CONSULTATION**

Classification Unrestricted

Summary: The Department for Communities and Local Government (DCLG) has published a consultation paper seeking views by 9 March on a draft of a proposed new Model Code of Conduct for Local Authority Members.

This report includes the consultation paper and suggests a draft response to be submitted by the Council.

FOR DECISION+

1. On 22 January the Department for Communities and Local Government (DCLG) published a consultation paper seeking views by 9 March on a draft of a proposed new Model Code of Conduct for Local Authority Members. A copy of the consultation paper is attached at **Appendix 1**.
2. The Government's intention is that the new model code should replace the existing four separate model codes (for parish councils; national parks and broads authorities; police authorities; and all other local authorities). However, the new model code contains exceptions for particular types of authority so this consolidation makes little practical difference to the existing arrangements.
3. The Government also intends that the new model code will replace the existing model code. As a result, each authority will have to formally adopt a new code based on the new model code. In addition, clause 131 of the Local Government and Public Involvement in Health Bill suggests that every Member will then be required to sign a new undertaking to observe his or her authority's new code.
4. A suggested draft KCC response to the consultation is attached at **Appendix 2**.

RECOMMENDATION

5. Members are requested to consider the suggested draft response and approve it on behalf of the Council for submission to the DCLG.

Background documents: None

S C Ballard
Head of Democratic Services
Tel: 01622 694002

Kent County Council

Comments on DCLG Consultation Paper on Proposed New Model Code of Conduct for Local Authority Members

Unlawful Discrimination (paragraph 2(2)(a) of the draft Model Code)

The Council accepts the reason for deleting the reference to unlawful discrimination and supports the proposed new wording.

Bullying (paragraph 2(2)(b))

The Council has previously supported inclusion of a provision against bullying which covers both one-off instances of bullying behaviour as well as a pattern of such behaviour. The Council therefore supports the proposed wording of this section.

Disclosure of Confidential Information (paragraph 3(a)(iii))

The Council has previously argued that a provision allowing Members to disclose confidential information where such disclosure is in the public interest is unnecessary. However, that was before the Adjudication Panel decision referred to in the consultation paper. In these circumstances, the Council is prepared to support this addition but, in answer to question 1, it is concerned that the proposed text might encourage members to treat the disclosure of confidential information too lightly. The text of the code needs to be much more prescriptive about the **exceptional** circumstances in which it could be in the public interest for a member to disclose confidential information.

Behaviour Outside Official Duties (paragraphs 4 and 5)

The Council has previously stated that the provision about Members' behaviour should continue to apply to Members both when on official business and in their private lives. The Council's view was – and remains - that this should continue to be a broad provision which covers activities which bring into question the Member's fitness to carry out his or her official duties, or which undermined confidence in his or her ability to carry out their official duties, as well as cases of unlawful behaviour.

In answer to question 2, therefore, while the Council supports the proposed amendment to sections 49 to 52 of the Local Government Act 2000 and the proposed new wording of the code, it is concerned that Ministers' intention is to provide that only private behaviour for which the Member has been convicted by a court should be proscribed by the code of conduct, and not behaviour falling short of a criminal offence.

Commission of Criminal Offence before Taking Office (paragraph 4(2))

Subject to its comments above, the Council supports the inclusion of this paragraph.

Using or Seeking to Use Improper Influence (paragraph 5(a) and (b)(ii))

The Council supports both of the changes proposed in this section.

Publicity Code (paragraph 5)

The Code of Recommended Practice on Local Authority Publicity has proved to be a very good and useful tool to ensure that standards of impartiality, neutrality, balance and fairness are maintained across all publicity issued by councils. In answer to question 3, therefore, the Council would endorse its retention.

Reporting Breaches of the Code and Proscribing Intimidation (paragraph 2(2)(c))

The Council has previously argued, and firmly remains of the view, that the existing provision in the code of conduct that requires Members to report breaches of the code by fellow Members should be retained in full. The Council would certainly support the addition of the provision prohibiting a Member from intimidating a complainant or anybody else involved in a case against them.

Gifts and Hospitality (paragraphs 7(a)(vi) and 8(3))

The Council would have no objection to the Register of Gifts and Hospitality being made public (and believes that most authorities already do this anyway) but is strongly against the inclusion of gifts and hospitality in the Register of Interests, because this would require Members to declare at meetings any relevant gifts and hospitality worth more than £25 which they had received at any time during the previous five years. This does seem somewhat disproportionate, and asking a great deal of the memories of Members.

The Council has previously expressed the view that £25 is now far too low a limit. The threshold for the registration of gifts and hospitality should be raised to at least £50 and be subject to regular review.

Body Influencing Public Opinion or Policy (paragraph 7(b)(iv))

The Council supports the clarification that the definition of a body influencing public opinion or policy includes political parties.

Interests of Family, Friends and Those with a Close Personal Association (paragraph 7(c)(i) and elsewhere)

The Council has previously argued for a stricter definition of “family” and “friend” and, in answer to question 5, supports the proposed text relating to friends, family and those with a close personal association.

Definition of Personal Interests (paragraph 7(c))

The proposed amendment does not appear likely to achieve what the Government says in the consultation paper that it wishes to achieve, because Members can already speak on issues affecting their own electoral divisions provided they declare a personal interest first. In any case, there is a very fine distinction between a decision which affects a Member more than other inhabitants of the **whole Council's area** and one which affects a Member more than the other inhabitants of his or her **electoral division or ward**. In practise therefore the amendment will make very little if any difference to the current position and it would be helpful if it could be re-thought.

Disclosure of Personal Interests

The Council has previously argued that the code should make clear that Members should only be required to declare personal interests relating to a friend or relative where they can reasonably be expected to be aware of that interest. The Council therefore supports the proposal in this section.

Public Service Interests (paragraphs 8(2) and 8(7))

The Council supports this proposed amendment.

Prejudicial Interests – List of Exemptions (paragraph 9(2)(b))

In answer to question 6, the Council believes that it would be appropriate for new exceptions, as set out in this section, to be included in the text as additions to the list of items which are not to be regarded as prejudicial.

Overview and Scrutiny Committees (paragraph 10)

The Council supports the proposals in this section, which appear entirely sensible.

Participation in Relation to Prejudicial Interests (paragraphs 9 and 11)

The Council supports the principle of providing a clearer prejudicial interest test to apply for public service interests and where Members attend to make representations. However, in answer to question 7, the way in which the principle is reflected in the proposed new code is confusing. Paragraph 9(2) of the new code says that a Member does not have a prejudicial interest in a matter where it is a public service interest, as defined in paragraph 9(4), so the Council questions why it is necessary to repeat the definition of public service interests in paragraph 11, when paragraph 11 deals entirely with the participation of Members who do have a prejudicial interest.

Sensitive Information (paragraphs 8(5) and 13)

The Council has previously expressed its support for the principle that sensitive information in respect of private interests should not be included in the public register of interests where doing so may lead to the Member being subject to violence or intimidation. However, the Council is concerned that the proposed text suggests that sensitive information in respect of private interests does not need to be recorded anywhere. The Council agrees that a Member should be able to apply to his or her Council's monitoring officer for an interest not to be subject to public disclosure, but suggests that the Code should then provide that, if the monitoring officer agrees that the interest is sensitive, it should be recorded on a separate confidential register of sensitive interests to be held by the Council's monitoring officer.

The Council is opposed to the suggested amendment to paragraph 8(5). The Council is concerned that requiring members with an accepted sensitive interest to disclose publicly the existence, but not the detail, of that interest at a meeting would defeat the whole object of the exercise. The fact that the member's interest was a sensitive one would be publicly revealed and, in many cases, the reason for the sensitivity would be clear, or could easily be guessed at, from the item under discussion. On the other hand, the Council is opposed to allowing members to participate in discussion of an item in which they have an accepted sensitive interest, without any requirement on them to disclose their interest. The Council therefore suggests that any member with an accepted sensitive interest in an item under discussion at a meeting at which they are present should be required to treat that interest as a prejudicial interest and leave the room until discussion of that item has concluded.

National Parks and Broads Authorities – Prejudicial Interest

Not applicable to the Council.

Register of Members' Interests (paragraphs 12 and 13)

The Council welcomes the simplification of the paragraphs on the registration of personal interests.

Gender Neutrality of Language

The Council supports both the principle of the use of gender-neutral language and the way in which this principle has been reflected in the proposed draft code.

Kent County Council

Comments on DCLG Consultation Paper on Proposed New Model Code of Conduct for Local Authority Members

Unlawful Discrimination (paragraph 2(2)(a) of the draft Model Code)

The Council accepts the reason for deleting the reference to unlawful discrimination and supports the proposed new wording.

Bullying (paragraph 2(2)(b))

The Council has previously supported inclusion of a provision against bullying which covers both one-off instances of bullying behaviour as well as a pattern of such behaviour. The Council therefore supports the proposed wording of this section.

Disclosure of Confidential Information (paragraph 3(a)(iii))

The Council has previously argued that a provision allowing Members to disclose confidential information where such disclosure is in the public interest is unnecessary. However, that was before the Adjudication Panel decision referred to in the consultation paper. In these circumstances, the Council is prepared to support this addition and, in answer to question 1, the proposed text does appear to strike the right balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest.

Behaviour Outside Official Duties (paragraphs 4 and 5)

The Council has previously stated that the provision about Members' behaviour should continue to apply to Members both when on official business and in their private lives. The Council's view was – and remains - that this should continue to be a broad provision which covers activities which bring into question the Member's fitness to carry out his or her official duties, or which undermined confidence in his or her ability to carry out their official duties, as well as cases of unlawful behaviour.

In answer to question 2, therefore, while the Council supports the proposed amendment to sections 49 to 52 of the Local Government Act 2000 and the proposed new wording of the code, it is concerned that Ministers' intention is to provide that only private behaviour for which the Member has been convicted by a court should be proscribed by the code of conduct, and not behaviour falling short of a criminal offence.

Commission of Criminal Offence before Taking Office (paragraph 4(2))

Subject to its comments above, the Council supports the inclusion of this paragraph.

Using or Seeking to Use Improper Influence (paragraph 5(a) and (b)(ii))

The Council supports both of the changes proposed in this section.

Publicity Code (paragraph 5)

The Code of Recommended Practice on Local Authority Publicity has proved to be a very good and useful tool to ensure that standards of impartiality, neutrality, balance and fairness are maintained across all publicity issued by councils. In answer to question 3, therefore, the Council would endorse its retention.

Reporting Breaches of the Code and Proscribing Intimidation (paragraph 2(2)(c))

The Council has previously argued, and firmly remains of the view, that the existing provision in the code of conduct that requires Members to report breaches of the code by fellow Members should be retained in full. However, if that provision is not to be retained, the Council would certainly support the addition of the provision prohibiting a Member from intimidating a complainant or anybody else involved in a case against them.

Gifts and Hospitality (paragraphs 7(a)(vi) and 8(3))

The Council would have no objection to the Register of Gifts and Hospitality being made public (and believes that most authorities already do this anyway) but is strongly against the inclusion of gifts and hospitality in the Register of Interests, because this would require Members to declare at meetings any relevant gifts and hospitality worth more than £25 which they had received at any time during the previous five years. This does seem somewhat disproportionate, and asking a great deal of the memories of Members.

The Council has previously expressed the view that £25 is now far too low a limit. The threshold for the registration of gifts and hospitality should be raised to at least £50 and be subject to regular review.

Body Influencing Public Opinion or Policy (paragraph 7(b)(iv))

The Council supports the clarification that the definition of a body influencing public opinion or policy includes political parties.

Interests of Family, Friends and Those with a Close Personal Association (paragraph 7(c)(i) and elsewhere)

The Council has previously argued for a stricter definition of “family” and “friend” and, in answer to question 5, supports the proposed text relating to friends, family and those with a close personal association.

Definition of Personal Interests (paragraph 7(c))

The proposed amendment does not appear likely to achieve what the Government says in the consultation paper that it wishes to achieve, because Members can already speak on issues affecting their own electoral divisions provided they declare a personal interest first. In any case, there is a very fine distinction between a decision which affects a Member more than other inhabitants of the **whole Council's area** and one which affects a Member more than the other inhabitants of his or her **electoral division or ward**. In practise therefore the amendment will make very little if any difference to the current position and it would be helpful if it could be re-thought.

Disclosure of Personal Interests

The Council has previously argued that the code should make clear that Members should only be required to declare personal interests relating to a friend or relative where they can reasonably be expected to be aware of that interest. The Council therefore supports the proposal in this section.

Public Service Interests (paragraphs 8(2) and 8(7))

The Council supports this proposed amendment.

Prejudicial Interests – List of Exemptions (paragraph 9(2)(b))

In answer to question 6, the Council believes that it would be appropriate for new exceptions, as set out in this section, to be included in the text as additions to the list of items which are not to be regarded as prejudicial.

Overview and Scrutiny Committees (paragraph 10)

The Council supports the proposals in this section, which appear entirely sensible.

Participation in Relation to Prejudicial Interests (paragraphs 9 and 11)

The Council supports the principle of providing a clearer prejudicial interest test to apply for public service interests and where Members attend to make representations. However, in answer to question 7, the way in which the principle is reflected in the proposed new code is confusing. Paragraph 9(2) of the new code says that a Member does not have a prejudicial interest in a matter where it is a public service interest, as defined in paragraph 9(4), so the Council questions why it is necessary to repeat the definition of public service interests in paragraph 11, when paragraph 11 deals entirely with the participation of Members who do have a prejudicial interest.

Sensitive Information (paragraphs 8(5) and 13)

The Council has previously expressed its support for the principle that sensitive information in respect of private interests should not be included in the public register of interests where doing so may lead to the Member being subject to violence or intimidation. However, the Council is concerned that the proposed text suggests that sensitive information in respect of private interests does not need to be recorded anywhere. The Council agrees that a Member should be able to apply to his or her Council's monitoring officer for an interest not to be subject to public disclosure, but suggests that the Code should then provide that, if the monitoring officer agrees that the interest is sensitive, it should be recorded on a separate confidential register of sensitive interests to be held by the Council's monitoring officer.

The suggested amendment to paragraph 8(5) is entirely acceptable to the Council.

National Parks and Broads Authorities – Prejudicial Interest

Not applicable to the Council.

Register of Members' Interests (paragraphs 12 and 13)

The Council welcomes the simplification of the paragraphs on the registration of personal interests.

Gender Neutrality of Language

The Council supports both the principle of the use of gender-neutral language and the way in which this principle has been reflected in the proposed draft code.