

**GOVERNANCE AND AUDIT COMMITTEE
29 JANUARY 2013**

**REVISED CODE OF CONDUCT FOR MEMBERS
Director of Corporate Services – Legal**

1 PURPOSE OF REPORT

- 1.1 This report seeks the Committee's endorsement to a draft revised Code of Conduct for Members ("the draft Code") which is set out at Annexe A to this report.

2 RECOMMENDATION

- 2.1 That the Committee recommend to the Governance and Audit Committee that the draft Code of Conduct for Members, incorporating the amendments proposed by the Standards Committee, be submitted to Council for adoption.**

3 REASONS FOR RECOMMENDATION

- 3.1 The draft Code is the outcome of the deliberations of a Member Working Group which was constituted to formulate a new revised Code of Conduct for Members. The draft Code has been considered by the Standards Committee which proposed a number of minor amendments.
- 3.2 The draft Code is considered to set out an appropriate framework for the conduct of Members and is consistent with the principles referred to in section 28 of the Localism Act 2011 ("the Act") which are set out in the Annexe to the draft Code.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 Both the Department for Communities and Local Government and the Local Government Association have issued draft model Codes of Conduct which were considered by the Member Working Group. The LGA model (which is similar to the CLG model) is attached as Annexe B to this report. However, the Working Group was unanimously of the view that a Code similar in format to the existing Code was much to be preferred over the CLG and LGA models which are considered to be somewhat aspirational in nature and fail to provide a definite framework for Member conduct which can be clearly understood by both Members and the public.

5 SUPPORTING INFORMATION

Background

- 5.1 The previous statutory regime for local authority Members standards which was set out in the Local Government Act 2000 required each Council to adopt a Code of Conduct in a form prescribed by statutory instrument. The Act abolished that regime. Instead, the Act (inter alia) requires each Council to adopt a Code dealing with the conduct that is expected of Members and co-opted Members when they are acting in such capacity. There is no

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prescribed form of Code but any Code adopted must, when viewed as a whole, be consistent with the Nolan principles (so called because they were first set out by the Committee for Standards in Public Life when the late Lord Nolan was chairman), namely:-

- selflessness
- integrity
- objectivity
- accountability
- openness
- honesty
- leadership

Also, the Code must include the provision which the Council considers appropriate in respect of the registration and disclosure of pecuniary and other interests. The Code should not contain anything which is inconsistent with the new provisions which the Act sets out in relation to Disclosable Pecuniary Interests (which term is defined in the Act and regulations made thereunder).

- 5.2 The provisions of the Act relating to Member conduct were brought in at short notice. Insufficient time was afforded to local authorities to give proper consideration as to the content of new Codes of Conduct. Accordingly, at its Annual Meeting in May, the Council adopted an interim Code (which essentially was in the same format as the previously prescribed Code but with alterations to reflect the new statutory requirements relating to Disclosable Pecuniary Interests). The report to Council indicated that subsequently consideration would be given to a new Code. To that end a member Working Group was formed comprising Councillors from the majority group, the minority group and non-group Members. The draft Code has been considered by Corporate Management Team, which suggested a small number of minor amendments, and by the Standards Committee at its meeting on 14 January 2013. The Standards Committee endorsed CMT's amendments and also proposed a number of minor amendments. The alterations cumulatively proposed by CMT and the Standards Committee are shown in italic script on the draft Code attached.

The Draft Code

- 5.3 The draft Code is in similar format to the previously prescribed Code. Section 3 of the draft Code ("General Obligations") is in identical form to the former Code save that paragraph 4.1(iv)(c) relating to the disclosure of exempt information spells out the requirements of the Council before such information can be disclosed (the former Code simply provided that any disclosure had to be "in compliance with the reasonable requirements of the Council"). The giving of two clear working days notice will allow the Chief Executive / Deputy Chief Executive / Borough Solicitor the opportunity (if appropriate) to counsel the Member against disclosure and in extremis to seek a court injunction precluding disclosure.
- 5.4 The main alterations to the former prescribed Code (and the current interim Code) are around the issue of the registration and disclosure of interests and the consequences of having an interest. The former prescribed Code defined a lengthy list of "Personal Interests" which required registration and disclosure. In addition, that Code provided that if a Personal Interest was

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such that a reasonable member of the public would reasonably conclude that the Member's judgement of the public interest in relation to the matter would be affected by the Personal Interest then the interest would also fall into the category of "Prejudicial Interest". The main consequences of having a Prejudicial Interest were that the Member was precluded from either participation in the decision making process or "improperly" seeking to influence a decision about the matter.

- 5.5 The Act replaced the concept of "Personal Interests" and "Prejudicial Interests" with "Disclosable Pecuniary Interests". The consequences of having a Disclosable Pecuniary Interest are similar to those previously pertaining to Prejudicial Interests but failure to comply now also constitutes a criminal offence. The extent to which the Police will seek to investigate any allegations remains to be seen. The interim Code retained the list of "Personal Interests" but currently the only requirement placed upon Members with such an interest (provided it does not also constitute a Disclosable Pecuniary Interest) is that it has to be registered.
- 5.6 One issue which Members of the Working Group felt particularly strongly about was that of membership of external organisations. In the nature of things, many Councillors are involved in the activities of other community groups or public bodies. It was felt that involvement in such organisations should not preclude a Member from involvement in the decision making process on a matter which affects such a group or body although if the Member is not appointed by the Council the Member should, in the interests of transparency, declare the interest (which would then be registered). If the Member has been appointed by the Council there should be no requirement to declare any interest as the appointment will already be a matter of public record (appointments to external organisations are set out each year in a report to the Annual Council Meeting). Paragraph 10 of the draft Code encapsulates the views of the Working Group relating to such interests. There is a possibility that in a limited number of instances the involvement of a Member with such an interest could infringe the common law relating to bias and for that reason paragraph 1.3 provides that when such circumstances obtain a Member should not involve themselves in the decision making process even though they may not have a Disclosable Pecuniary Interest or an "Affected Interest" (as to which see below).
- 5.7 The draft Code faithfully reflects the Act in so far as it relates to Disclosable Pecuniary Interests (paragraph 7 of the draft Code). However, under the Act, only the interest of the Member or his/her spouse or partner falls within the definition of Disclosable Pecuniary Interest. Accordingly, the interest of a child or close friend of the Member does not fall within the definition and therefore a Member would not be infringing the statutory requirements if, for example, he/she participated in a decision whether or not to approve an application for a planning permission or a grant submitted by such a person. Quite obviously, such a scenario would be repugnant to public confidence in the workings of the Council. In order to address that statutory lacuna the draft Code formulates the concept of an "Affected Interest" (see paragraph 8). The consequences under the Code of having an Affected Interest will be identical to those for having a Disclosable Pecuniary Interest and therefore it will not be necessary for Members to make a judgement as to which category an interest falls within (though of course, failure to comply with the provisions of the Code relating to an Affected Interest will not render a Member susceptible

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to criminal prosecution unless it also constitutes a Disclosable Pecuniary Interest).

- 5.8 The main variation to the draft Code formulated by the Member Working Group which has been proposed by the Standards Committee is that relating to the value of gifts or hospitality received by Members (paragraph 11). The previous prescribed Code specified a threshold of £25 (below which gifts/hospitality need not be registered). The Working Group considered that the threshold should be increased to £75. The suggestion gave rise to a significant level of debate at the Standards Committee, many Members of which felt that £75 would be too high a threshold. Although not ruling out an increase the Standards Committee recommended that the threshold should remain at £25 until such time as it is able to give more detailed consideration on receiving a report specifically addressing the issue.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report.

Borough Treasurer

- 6.2 There are no financial implications directly arising.

Equalities Impact Assessment

- 6.3 Not required.

Strategic Risk Management Issues

- 6.4 None.

Other Officers

- 6.5 None.

7 CONSULTATION

Principal Groups Consulted

- 7.1 As set out in section 5 above, the draft Code has been formulated by a Member Working Group and has been considered by the Standards Committee and CMT.

Method of Consultation

- 7.2 Meetings of the Working Group, the Standards Committee and CMT.

Representations Received

- 7.3 As alluded to in section 5 above.

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Background Papers

File of Borough Solicitor

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Doc. Ref

AJ/f/reports/Standard Committee – 14 January 2013 – Revised Code of Conduct for Members