

Update on Issues relating to the New Code of Conduct for Members

Report of the Clerk

For further information about this report please contact Sue Kembrey, Clerk and Monitoring Officer to the Fire Authority, on 01952 383200 or Matt Cumberbatch, Group Solicitor (Standards and Regulatory), on 01952 383255.

1 Purpose of Report

A revised Model Code of Conduct for elected Members was adopted by the Fire Authority on 1 August 2007. This report addresses some of the current issues that relate to the new Code.

2 Recommendations

The Committee is asked to:

- a) Note the contents of this report; and
- b) Confirm, on behalf of the Fire Authority, that the adoption of the Model Code of Conduct, as per the decision of the Standards Committee on 1 August 2007, relates to the version of the Code, as it appears at the appendix to this report.

3 Background

A revised Code of Conduct for elected Members was agreed for adoption by the Fire Authority at a meeting of this committee on 1 August 2007. The amendments to the Code have raised various issues with regard to its interpretation and the changes in the requirements that have to be met by Members. Some of these issues are addressed here for consideration by the Committee.

4 Members Acting in a Private Capacity

As the committee will be aware from previous reports, the new Code of Conduct limits the occasions when actions in a private capacity are covered



by the Code. The wording in paragraph 2(3) of the Code states that only if a Member's alleged misconduct is linked to the functions of their office will any conduct in their private capacity be covered, even if that conduct results in a conviction.

In this respect, the Code is following the recent High Court decision in *Livingstone –v- Adjudication Panel for England*. Prior to this decision, it was understood that a Member could breach the Code through their conduct in a private capacity. However, the High Court decided that Members should only be required to comply with the Code in their official capacity.

The Standards Board are now stating that when the Local Government and Public Involvement in Health Bill receives royal assent in the Autumn, it will amend these changes to the new Code and it will enable the Code to cover some conduct in a private capacity, in that it will cover conduct which has led to a criminal conviction. Given the current wording of the new Code, it is anticipated that this will require an amendment to the existing Code. The Committee will be kept up to date with regard to any further developments in this regard.

5 Disclosure of Confidential Information

Paragraph 4 of the new Code sets out different criteria as to the disclosure of confidential information. It is still contrary to the Code for Members to release confidential information, when they “believe, or ought reasonably to be aware” that it is of a confidential nature. The new Code also introduces other specific exemptions as to when confidential information may be disclosed.

Members of the Committee may recall that at the last meeting, an issue in The Standards Board Bulletin number 34 was discussed, where the Standards Board for England recommended that a robust protocol in respect of how confidential information is to be dealt with should be prepared. The protocol is still in the process of being prepared. In the meantime guidance has been sought from the Board in respect of this area of the Code. A particular area of interest relating again to the issue of Members acting in a private capacity was raised specifically with the Board and both the question and subsequent response are set out below.

Question

“I am unclear as to whether Paragraph 4 of the model Code would cover a situation where a member obtains confidential information in their official capacity, but discloses it in their personal capacity, perhaps for personal gain. Please can you clarify this particular issue so that it can be addressed in our protocol?”

Answer

“The SBE's [Standard Board for England's] view is that paragraph 4 of the model code would cover a situation where a member obtains confidential information in their official capacity and discloses it in their personal capacity for personal gain. It might also of course potentially be breaches of paras. 5



and 6(a). Whilst this particular para. 4 circumstance has not been definitively addressed by the courts, it would appear to the SBE that the best view is that a court [would] not allow such a deviation from the clear wording of the para. 4, by allowing a member to escape liability by claiming to have received the information, qua councillor, but to have disclosed it as an ordinary member of the public.”

6 Number of Complaints

The most recent Standards Board Bulletin confirms that from 1 April to 31 July 2007 there were 1,238 allegations made to the Standards Board for England, compared with the lower figure of 1,131 during the same period in 2006. The Standards Board for England have not offered an explanation as to why there is an increase in the number of allegations and it may be appropriate to leave a further period of time after the introduction of the new Code before being able to make any proper assessment as to whether or not the new Code has had any effect upon the number of complaints received.

7 Training

The Committee will receive a separate report on the Code of Conduct Training, which took place on 19 July 2007 at the Civic Offices of Telford & Wrekin Council. Similarly, the new training DVD issued by the Standards Board will also be addressed in the separate training report and will be viewed by Members during this meeting.

8 Adoption of the Code of Conduct

The Standards Board for England has been informed about the adoption of the Code of Conduct by the Fire Authority and an advertisement has been placed in the Shropshire Star confirming its adoption and details of where the Code can be viewed.

All Members of the Fire Authority have been contacted with regard to their register of interest forms for them to check to ensure that they are up-to-date and compliant with the new Code.

Whilst undertaking the administration work following the adoption of the Code, it was noted that the version of the Code, which appeared at Appendix C of the reports considered by this Committee at its meeting on 1 August 2007, contained an inadvertent omission. Attached as an appendix to this report is the version of the Code adopted by the Fire Authority on the last occasion with the appropriate section at paragraph 7 and paragraph 10(2)(c) included.

The sections were inadvertently omitted on the last occasion and did not form parts of the Code, which were intentionally removed (these sections were specifically addressed by the Group Solicitor presenting the report). Whilst this is a minor administrative point, it is considered prudent that the Committee confirms its agreement to adoption of the Code as rectified.



9 Financial Implications

There are no financial implications associated with this report.

10 Legal Comment

The legal implications are as outlined in the body of the report.

11 Equality Impact Assessment

Officers have considered the Service's Brigade Order on Equality Impact Assessments (Personnel 5 Part 2) and have decided that there are no discriminatory practices or differential impacts upon specific groups arising from this report. An Initial Equality Impact Assessment has not, therefore, been completed.

12 Appendix

Shropshire and Wrekin Fire Authority Code of Conduct

13 Background Papers

- The Local Authority (Model Code of Conduct) Order 2007 – Statutory Instrument 2007 number 1159
- Standards Board for England Bulletin 35
- Email from Standards Board for England to Group Solicitor at Telford & Wrekin Council dated 29 August 2007

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	
Capacity		Member Involvement	
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial		Staff	
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*



Shropshire and Wrekin Fire Authority

Code of Conduct

Part 1 - General Provisions

1. Introduction and Interpretation

- (1) This Code applies to **you** as a member of the Authority.
- (2) You should read this Code together with the general principles prescribed by the Secretary of State, which are set out on the attached appendix.
- (3) It is your responsibility to comply with the provisions of this Code.
- (4) In this Code –

“meeting” means any meeting of –
 - (a) the Authority;
 - (b) any of the Authority’s committees, sub-committees, joint committees, or joint sub-committees;
“member” includes a co-opted member and an appointed member;

“monitoring officer” means the monitoring officer of Telford & Wrekin Council.

2. Scope

- (1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you –
 - (a) conduct the business of your Authority (which, in this Code, includes the business of the office to which you are elected or appointed); or
 - (b) act, claim to act or give the impression you are acting as a representative of your Authority, and references to your official capacity are construed accordingly.
- (2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

- (3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.
- (4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).
- (5) Where you act as a representative of your Authority –
 - (a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, you must, when acting for that other body, comply with your Authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

3. General obligations

- (1) You must treat others with respect.
- (2) You must not –
 - (a) do anything which may cause your Authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);
 - (b) bully any person;
 - (c) intimidate or attempt to intimidate any person who is or is likely to be –
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) involved in the administration of any investigation or proceedings, in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or
 - (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your Authority.

4. You must not –
- (a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where –
 - (i) you have the consent of a person authorised to give it;
 - (ii) you are required by law to do so;
 - (iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or
 - (iv) the disclosure is –
 - (aa) reasonable and in the public interest; and
 - (bb) made in good faith and in compliance with the reasonable requirements of the Authority; or
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or the Authority into disrepute.
6. You –
- (a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and
 - (b) must, when using or authorising the use by others of the resources of the Authority:
 - (i) act in accordance with the Authority’s reasonable requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.
7. (1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by
- (a) the Authority’s Treasurer; or
 - (b) the Monitoring Officer,
- where that officer is acting pursuant to his or her statutory duties.

Part 2 - Interests

8. Personal interests

- (1) You have a personal interest in any business of the Authority where either –
 - (a) it relates to or is likely to affect –
 - (i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by the Authority;
 - (ii) any body –
 - (aa) exercising functions of a public nature;
 - (bb) directed to charitable purposes; or
 - (cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union), of which you are a member or in a position of general control or management;
 - (iii) any employment or business carried on by you;
 - (iv) any person or body who employs or has appointed you;
 - (v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;
 - (vi) any person or body who has a place of business or land in the Authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);
 - (vii) any contract for goods, services or works made between the Authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);
 - (viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;
 - (ix) any land in the Authority's area in which you have a beneficial interest;

- (x) any land where the landlord is the Authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;
 - (xi) any land in the Authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or
 - (b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of other authority tax payers, ratepayers or inhabitants of the Authority's area.
- (2) In sub-paragraph (1)(b), a relevant person is –
- (a) a member of your family or any person with whom you have a close association; or
 - (b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or
 - (d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

9. Disclosure of personal interests

- (1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of the Authority and you attend a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.
- (2) Where you have a personal interest in any business of the Authority which relates to or is likely to affect a person described in paragraph 7(1)(a)(i) or 7(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.
- (3) Where you have a personal interest in any business of the Authority of the type mentioned in paragraph 7(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

- (4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.
- (5) Where you have a personal interest but, by virtue of paragraph 12, sensitive information relating to it is not registered in the Authority's register of members' interests, you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

10. Prejudicial interest generally

- (1) Subject to sub-paragraph (2), where you have a personal interest in any business of the Authority you also have a prejudicial interest in that business 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.
- (2) You do not have a prejudicial interest in any business of the Authority where that business –
 - (a) does not affect your financial position or the financial position of a person or body described in paragraph 7;
 - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 7; or
 - (c) relates to the functions of your Authority in respect of –
 - (i) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or entitled to the receipt of, such pay;
 - (ii) an allowance, payment or indemnity given to members;
 - (iii) any ceremonial honour given to members; and
 - (iv) setting a precept under the Local Government Finance Act 1992.

11. Effect of prejudicial interests on participation

- (1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of the Authority –
 - (a) you must withdraw from the room or chamber where a meeting considering the business is being held—
 - (i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

- (ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting; unless you have obtained a dispensation from the Authority's Standards Committee; and
 - (b) you must not seek improperly to influence a decision about that business.
- (2) Where you have a prejudicial interest in any business of the Authority, you may attend a meeting answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3 - Registration of Members' Interests

12. Registration of members' interests

- (1) Subject to paragraph 12, you must, within 28 days of—
- (a) this Code being adopted by or applied to the Authority; or
 - (b) your election or appointment to office (where that is later), register in the Authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 7(1)(a), by providing written notification to the monitoring officer.
- (2) Subject to paragraph 12, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to the monitoring officer.

13. Sensitive information

- (1) Where you consider that the information relating to any of your personal interests is sensitive information, and the monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 11.
- (2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify the monitoring officer asking that the information be included in the Authority's register of members' interests.

- (3) In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Appendix

Selflessness

Members should only serve the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

Members should be as open as possible about their actions and those of their Authority, and should be prepared to give reasons for those actions.

Personal Judgement

Members may take account of the view of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

Members should promote equality by not discriminating unlawfully against any person and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the Authority's statutory officers and its other employees.

Duty to Uphold the Law

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

Members should do whatever they are able to do to ensure that their authorities used their resources prudently and in accordance with the law

Leadership

Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.