

HALESOWEN AREA COMMITTEE: 25TH JANUARY 2006

REPORT OF THE DIRECTOR OF LAW AND PROPERTY

MEMBERS' CODE OF CONDUCT

Purpose of Report

1. To raise awareness of the Members' Code of Conduct.

Background

2. In March 2002 the Council approved the Members' Code of Conduct, and in July 2005, as part of a review of the Code, the Council decided that each Area Committee should receive a report to heighten public awareness of the existence of the Code.
3. A copy of the Code is attached to this report at Appendix 1. The Code reflects the principles developed by the Nolan Committee on Standards in Public Life, and its aim is to promote and maintain high standards of conduct by Councillors, co-opted members and church and parent-governor representatives on Select Committees.
4. The Code is in three Parts.
5. Part 1 sets out a number of general provisions and obligations which make it clear that, apart from two exceptions, the Code only applies when a member is acting in a public capacity. The two exceptions are set out in paragraphs 4 and 5(a), i.e:-
 - A member must not in their official capacity, or any other circumstance, conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute.
 - A member must not in their official capacity, or any other circumstance, use their position as a member improperly to confer on or secure for themselves or any other person an advantage or disadvantage.
6. The general obligations include:-
 - promoting equality
 - treating others with respect, and
 - not disclosing confidential information without consent.

7. Part 2 of the Code deals with the declaration of personal or prejudicial interests.
8. A member has a **personal** interest in any matter:-
 - If it is an interest that has to be included in the Register of Members' Interests (see below), or
 - If a decision upon the matter might reasonably be regarded as affecting the well-being or financial position of the member, their relatives or friends, more than it would affect other people in the Borough. This includes any employment or business that they may have, any company in which they have shares exceeding the nominal value of £5,000, or any public authority or charity in which they hold a position of general control or management.
9. If a member has a personal interest in a matter which is to be considered at a meeting of the full Council, Cabinet, Committee or Sub-Committee, they must declare the interest at the meeting and it will be recorded in the minutes. The declaration of a personal interest will not prevent a member from participating in the discussion or from voting.
10. Sometimes a personal interest is also **prejudicial**, i.e. a member of the public with knowledge of the relevant facts would reasonably regard the interest as so significant that it is likely to prejudice the members' judgment of the public interest. In such a case, the member must withdraw from the meeting whilst the matter is under consideration and must not vote.
11. There are some exceptions to the rule on prejudicial interests. For example, if the interest relates to an organisation to which the member has been appointed by the Council, the member may regard the interest as not being prejudicial. In addition, in some circumstances a member with a prejudicial interest which is not of a financial nature may also participate in a meeting of an Area Committee.
12. Part 3 deals with the registration of financial and other interests by a member in a Register which is kept in my Directorate and is publicly accessible. The type of information that must be registered includes details of any employment or business carried on by a member, and details of any contract between the Council and the member or a firm or company of which they are a partner or director.
13. Finally, the Code requires members to provide written notification of the receipt of any gift or hospitality over the value of £25.

Failure to comply with the Code

14. A failure to comply with the Code can have serious implications. A complaint that the Code has been breached must be reported to the Standards Board for England who are based in London. They will decide whether or not there is a breach and whether it should be investigated either by them nationally or locally by the Council's Monitoring Officer. The less serious breaches tend to be referred for local investigation and local determination by the Standards Committee, whilst the more serious offences are dealt with nationally.

15. If a breach is proved, the range of sanctions includes censure, suspension and disqualification from holding public office for up to 5 years.
16. In my role as Monitoring Officer, I can give preliminary assistance to a potential complainant to help to identify the relevant facts and background before any decision is taken to refer the complaint to the Standards Board for England, and complainants are encouraged to make use of this facility.
17. To date, in Dudley there have been very few complaints to the Standards Board for England, and in only two cases has a member been found to be in breach of the Code. In both of those cases the breach was deemed to be relatively minor and no further action was required.
18. My overall assessment as Monitoring Officer, therefore, is that members do comply with the Code, but the Council must continue to be vigilant in ensuring that high standards are maintained and that the public are aware of the Code together with its reporting procedures.

Finance

19. There are no financial implications arising from this report.

Law

20. The relevant provisions regarding the Members' Code of Conduct are contained in Sections 49-52 of the Local Government Act 2000, and Regulations made by the Secretary of State.

Equality Impact

21. This report complies with the Council's policy on equal opportunities and diversity.

Recommendation

22. It is recommended that this report be noted.

John Polychronakis

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J. Polychronakis.
Director of Law and Property.

Contact Officer: John Polychronakis.
Telephone: 01384 815300
Email: john.polychronakis@dudley.gov.uk

List of Background Papers

None.

DUDLEY METROPOLITAN BOROUGH COUNCIL
MEMBERS' CODE OF CONDUCT

PART I

GENERAL PROVISIONS

Scope

1. (1) A member must observe the authority's code of conduct whenever he:
 - (a) conducts the business of the authority;
 - (b) conducts the business of the office to which he has been elected or appointed; or
 - (c) acts as a representative of the authority,and references to a member's official capacity shall be construed accordingly.
- (2) An authority's code of conduct shall not, apart from paragraphs 4 and 5(a) below, have effect in relation to the activities of a member undertaken other than in an official capacity.
- (3) Where a member acts as a representative of the authority:
 - (a) on another relevant authority he must, when acting for that other authority, comply with that other authority's code of conduct; or
 - (b) on any other body, he must, when acting for that other body, comply with the authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.
- (4) In this code, "member" includes a co-opted member of an authority.

General Obligations

2. A member must:
 - (a) promote equality by not discriminating unlawfully against any person;
 - (b) treat others with respect; and

- (c) not do anything which compromises or which is likely to compromise the impartiality of those who work for, or on behalf of, the authority.
3. A member must not:
- (a) disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; nor
 - (b) prevent another person from gaining access to information to which that person is entitled by law.
4. A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.
5. A member:
- (a) must not in his official capacity, or any other circumstance, use his position as a member improperly to confer on or secure for himself 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 requirements; and
 - (ii) ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or of the office to which the member has been elected or appointed.
6. (1) A member must when reaching decisions:
- (a) have regard to any relevant advice provided to him by:
 - (i) the authority's Chief Finance Officer acting in pursuance of his duties under section 114 of the Local Government Finance Act 1988; and
 - (ii) the authority's monitoring officer acting in pursuance of his duties under section 5(2) of the Local Government and Housing Act 1989, and
 - (b) give the reasons for those decisions in accordance with the authority's and any statutory requirements in relation to the taking of an executive decision.

- (2) In sub-paragraph (1)(b) above and in paragraph 9(2) below “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.
7. A member must, if he becomes aware of any conduct by another member which he reasonably believes involves a failure to comply with the authority’s code of conduct, make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him to do so.

PART 2

INTERESTS

Personal Interests

8. (1) A member must regard himself as having a personal interest in any matter if the matter relates to an interest in respect of which notification must be given under paragraphs 14 and 15 below, or if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, ratepayers or inhabitants of the authority’s area, the well-being or financial position of himself, a relative or a friend or:
- (a) any employment or business carried on by such persons;
 - (b) any person 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 corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (d) any body listed in sub-paragraphs (a) to (e) of paragraph 15 below in which such persons hold a position of general control or management.
- (2) In this paragraph:
- (a) “relative” means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
 - (b) “partner” in sub-paragraph (2)(a) above means a member of a couple who live together.

Disclosure of Personal Interests

9. (1) A member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered 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) Subject to paragraph 12(1)(b) below, a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

Prejudicial Interests

10. (1) Subject to sub-paragraph (2) below, a member with a personal interest in a matter also has a prejudicial interest in that matter if 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 the member's judgement of the public interest.
- (2) A member may regard himself as not having a prejudicial interest in a matter if that matter relates to:
 - (a) another relevant authority of which he is a member;
 - (b) another public authority in which he holds a position of general control or management;
 - (c) a body to which he has been appointed or nominated by the authority as its representative;
 - (d) the housing functions of the authority where the member holds a tenancy or lease with a relevant authority, provided that he does not have arrears of rent with that relevant authority of more than two months, and provided that those functions do not relate particularly to the member's tenancy or lease;
 - (e) the functions of the authority in respect of school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, unless it relates particularly to the school which the child attends;
 - (f) the functions of the authority in respect of statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992 where the member is in receipt of, or is entitled to the receipt of, such pay from a relevant authority; and

- (g) the functions of the authority in respect of an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989.

Overview and Scrutiny Committees

- 11. (1) For the purposes of this Part, a member must if he is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee, regard himself as having a personal and a prejudicial interest if that consideration relates to a decision made, or action taken, by another of the authority's:
 - (a) committees or sub-committees; or
 - (b) joint committees or joint sub-committees,of which he may also be a member.
- (2) But sub-paragraph (1) above shall not apply if that member attends that meeting for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

Participation in Relation to Disclosed Interests

- 12. (1) Subject to sub-paragraph (2) below, a member with a prejudicial interest in any matter must:
 - (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he has obtained a dispensation from the authority's standards committee;
 - (b) not exercise executive functions in relation to that matter; and
 - (c) not seek improperly to influence a decision about that matter.
- (2) A member with a prejudicial interest may, unless that interest is of a financial nature, and unless it is an interest of the type described in paragraph 11 above, participate in a meeting of the authority's:
 - (a) overview and scrutiny committees; and
 - (b) joint or area committees,to the extent that such committees are not exercising functions of the authority or its Cabinet.

13. For the purposes of this Part, “meeting” means any meeting of:
- (a) the authority;
 - (b) the Cabinet of the authority; or
 - (c) any of the authority’s or its Cabinet’s committees, sub-committees, joint committees, joint sub-committees, or area committees.

PART 3

THE REGISTER OF MEMBERS’ INTERESTS

Registration of Financial and Other Interests

14. Within 28 days of the provisions of an authority’s code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his financial interests in the authority’s register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority’s monitoring officer of:
- (a) any employment or business carried on by him;
 - (b) the name of the person who employs or has appointed him, the name of any firm in which he is a partner, and the name of any company for which he is a remunerated director;
 - (c) the name of any person, other than a relevant authority, who has made a payment to him in respect of his election or any expenses incurred by him in carrying out his duties;
 - (d) the name of any corporate body which has a place of business or land in the authority’s area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body;
 - (e) a description of any contract for goods, services or works made between the authority and himself or a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above;
 - (f) the address or other description (sufficient to identify the location) of any land in which he has a beneficial interest and which is in the area of the authority;

- (g) the address or other description (sufficient to identify the location) of any land where the landlord is the authority and the tenant is a firm in which he is a partner, a company of which he is a remunerated director, or a body of the description specified in sub-paragraph (d) above; and
 - (h) the address or other description (sufficient to identify the location) of any land in the authority's area in which he has a licence (alone or jointly with others) to occupy for 28 days or longer.
15. Within 28 days of the provisions of the authority's code of conduct being adopted or applied to that authority or within 28 days of his election or appointment to office (if that is later), a member must register his other interests in the authority's register maintained under section 81(1) of the Local Government Act 2000 by providing written notification to the authority's monitoring officer of his membership of or position of general control or management in any:
- (a) body to which he has been appointed or nominated by the authority as its representative;
 - (b) public authority or body exercising functions of a public nature;
 - (c) company, industrial and provident society, charity, or body directed to charitable purposes;
 - (d) body whose principal purposes include the influence of public opinion or policy; and
 - (e) trade union or professional association.
16. A member must within 28 days of becoming aware of any change to the interests specified under paragraphs 14 and 15 above, provide written notification to the authority's monitoring officer of that change.

Registration of Gifts and Hospitality

17. A member must within 28 days of receiving any gift or hospitality over the value of £25, provide written notification to the authority's monitoring officer of the existence and nature of that gift or hospitality.