

**MANCHESTER CITY COUNCIL  
REPORT FOR RESOLUTION**

**COMMITTEE:** Standards Committee  
**DATE:** 5 March 2007  
**SUBJECT:** Revised Model Code of Conduct for Local Authority Members  
**REPORT OF:** The City Solicitor

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**PURPOSE OF REPORT:**

To seek the Standards Committee's comments on the consultation paper issued by the Department for Communities and Local Government ("DCLG") on the proposed changes to the code of conduct for members ("the Code") and the draft response to that consultation paper included in the Appendix.

**RECOMMENDATIONS:**

1. To consider and comment on the proposed changes to the Code and the draft response set out in the Appendix to this report.
2. To delegate to the City Solicitor authority to respond to the consultation paper incorporating the comments provided by the Standards Committee.

**FINANCIAL CONSEQUENCES FOR REVENUE BUDGET:**

None

**FINANCIAL CONSEQUENCES FOR CAPITAL BUDGET:**

None

**WARDS AFFECTED:**

All

**IMPLICATIONS FOR:**

<b>Antipoverty</b>	<b>Equal Opportunities</b>	<b>Environment</b>	<b>Employment</b>
No	No	No	No

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## **BACKGROUND DOCUMENTS:**

Consultation paper issued by the DCLG dated 22 January 2007  
Reports to the Standards Committee on 17 May 2005, 12 September 2005 and 15 January 2007

### **1. Background**

- 1.1 The DCLG published a consultation paper on 22 January 2007 seeking views on a draft revised code of conduct for members. The closing date for responses is 9 March 2007.
- 1.2 The draft revised Code has been issued following the announcement in the Local Government White Paper *Strong and Prosperous Communities* published in October 2006 of the Government's intention to put in place a clearer, simpler and more proportionate Code. Prior to the draft revised Code being issued, the Standards Board for England ("SBE") consulted on the principles for a revised Code in 2005. The DCLG (then the Office of the Deputy Prime Minister) issued a discussion paper entitled *Standards of Conduct in English Local Government: the Future* in December 2005 which included the Government's response to the SBE's recommendations on proposed changes to the Code. However, this is the first time that the City Council has been able to consider the proposed text of the new Code.

### **2. Details of the Proposals**

- 2.1 The main proposed changes are:
  - 2.1.1 the rules have been amended so that notwithstanding a prejudicial interest, members may with the consent of the meeting attend meetings to make representations, answer questions and give evidence. This will particularly benefit members who may, for example, wish to make representations on planning and licensing applications which affect their own property or neighbourhood;
  - 2.1.2 there is a new category of 'public service interest' which makes the requirements for members appointed or nominated by the authority to outside bodies less onerous. The interest is only declarable if the member speaks on an item in the meeting and it is only prejudicial in limited circumstances;
  - 2.1.3 the personal interest test relating to family and friends has been widened to include individuals with whom the member has a "close personal association", the SBE will issue guidance on how members should interpret this but it is anticipated that the definition includes business and professional associates. The requirement for a member to disclose interests relating to a family member,

friend or person with whom they have a close personal association is limited to those that the member is aware of or ought reasonably be aware of. Also, the personal interest test has been defined as one which affects the member to a greater extent than the majority of their ward residents thereby reducing the likelihood of there being a personal interest;

- 2.1.4 the unlawful discrimination provision is to be replaced by a duty that members should not do anything that would seriously prejudice their authority's statutory duties in regard to equality. This will allow action to be taken on some discrimination issues that have previously been outside the scope of the Code;
  - 2.1.5 bullying is specifically referred to in the Code and its definition will be clarified by SBE guidance;
  - 2.1.6 the whistleblowing duty to report breaches by other members has been removed;
  - 2.1.7 members will be able to disclose confidential information where the disclosure is in the public interest. The SBE will issue guidance on how to apply the public interest test (the City Council raised concerns regarding the application of this difficult test in its response to the SBE's consultation in 2005);
  - 2.1.8 certain behaviour outside of official duties will be regulated but the proposal is that this should be limited to behaviour found to be unlawful by a court. However, the current drafting does not seem to reflect this intention;
  - 2.1.9 the provision on use of an authority's resources is to be extended to include having regard to the Government's Code of Recommended Practice on Local Authority Publicity (this was not supported by the Council in its response to the SBE's consultation in 2005, the Council felt that breaches of the publicity code should be enforced locally). The definition of "political purposes" has been clarified as "including party political purposes";
  - 2.1.10 the draft revised Code prohibits the intimidation of any person involved in an investigation, including the complainant, witnesses and officers of the authority; and
  - 2.1.11 members will be required to register gifts and hospitality over £25 in the register of interests and to declare these at meetings within 5 years of the date of registration.
- 2.2 The proposed changes do not address the issue of bias; clarify the confusion regarding when a beneficial interest in a company is a personal interest or raise the threshold for the declaration of gifts and hospitality.
  - 2.3 The consultation paper is silent on the timing and implementation of the revised Code following the consultation process. However, the SBE understand that the revised

Code is intended to be tabled in Parliament later in March and that authorities will then have six months from May 2007 to adopt it. The Government has previously indicated that it hopes local authorities will be able to adopt the revised Code at their annual meetings in early May.

### **3. Response to the DCLG on the draft revised Code**

- 3.1 The DCLG have invited both general comments and responses to specific questions on the scope and effectiveness of the revised Code. The specific questions raised in the consultation paper are set out in the Appendix together with a suggested draft response.
- 3.2 The consultation paper and draft response set out in the Appendix were e-mailed to members of the Council on 23 February 2006 and members were invited to provide any comments to their representatives on the Standards Committee by 5 March 2007.
- 3.3 Members of the Standards Committee are asked to comment on the proposed changes to the Code and the suggested draft response set out in the Appendix. The Standards committee are further requested to delegate to the City Solicitor authority to respond to the consultation paper incorporating any comments provided.

MANCHESTER CITY COUNCIL DRAFT RESPONSE TO CONSULTATION ON  
THE REVIEW OF THE CODE OF CONDUCT FOR MEMBERS 2007

Responses to Consultation Questions

1. Does the proposed text on the disclosure of confidential information strike an appropriate 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?

The Council welcomes clarification on whether the exception at paragraph 3(a)(iii) is a two part test so that the disclosure must be:

- (aa) reasonable and in the public interest; **and**
- (bb) made in good faith and does not breach any reasonable requirements of the authority

or whether (aa) and (bb) are separate exemptions. The Council's view is that this should be a two part test. The Council feels that clear and detailed guidance on weighing the public interest test is necessary to assist members in striking an appropriate balance between the requirement to preserve confidentiality those occasions when it is appropriate to disclose. In practice it will be extremely difficult for a member to balance these competing interests and we believe a protocol should be issued to ensure certain factors are taken into account when weighing the public interest test e.g. members may not have the full information or facts to enable them to make an appropriate judgment, if officers were made aware of proposals to disclose confidential information they could assist in ensuring that all relevant factors are considered.

2. Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in a member's private capacity to those activities which have already been found to be unlawful by the courts, appropriate?

The Council agrees that paragraphs 4 and 5 of the code should be limited to activities in the member's private capacity that have been found to be unlawful by the courts. However paragraphs 4 and 5 as currently drafted appear to be wider than this. Paragraph 4(2) states that the conduct **may** include a criminal offence, but neither paragraph restricts the conduct to unlawful acts only.

3. Is the Publicity Code serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, e.g. via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?

The Council believes that the Publicity Code serves a useful purpose in providing guidance regarding sensitive issues and in particular in the period running up to elections. However, the Council would welcome a review and update of the Publicity Code as it has been 6 years since it was last reviewed. We believe that the Publicity Code should apply to all bodies to whom the Model Code of Conduct applies. In addition, the Council believes that minor breaches of the Publicity Code should be dealt with internally under the Council's own procedures.

4. Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?

The Council agrees that the register should be available for public inspection. However the requirement to register gifts and hospitality as a personal interest and to declare them at meetings for a period of 5 years seems excessive. If gifts and hospitality are to be treated as personal interests, the Council considers that a higher figure than £25 would be a more appropriate threshold for registration and declaration.

5. Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?

Yes, however the Council would welcome the proposed guidance from the Standards Board for England to provide assistance to members on how to interpret this definition and in particular what constitutes a close personal association.

6. Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not regarded as prejudicial?

The Council welcomes the additional exceptions which provide clarity for members.

7. Is the proposed text relaxing the rules to allow increased representation at meetings, including where members attend to make representations, answer questions, or give evidence, appropriate?

The Council agrees that notwithstanding a prejudicial interest a member may with the consent of the meeting attend to make representations, answer questions and give evidence so as to redress the current position where members are deprived from representing their own personal position as a member of the public. This helps to reinstate the rights of members so that they are at least the equivalent of members of the public.

The Council considers that paragraph 9(3) should state “Notwithstanding their prejudicial interest, a member may attend a meeting for the purpose of making representations etc.” to make it clear that despite the prejudicial interest, the member is not prevented from participating in the meeting for the purpose of making representations, answering questions and giving evidence.

8. Is there a better, more user-friendly way of ensuring the text is gender-neutral, for example, would consultees consider that amending the wording to say “you” instead of “he or “she” would result in a clearer more accessible code for members?

Yes.

### **Additional Comments**

In addition to the responses to the consultation questions, the Council would like to make the following comments:

- (i) Unlawful discrimination – deletion of the reference to unlawful discrimination (paragraph 2(2)(a))

The Council agrees that unlawful discrimination is not an issue on which a standards committee is permitted to make a finding and therefore the provision in the current Code is unsatisfactory. However, we are concerned that the proposed test of “seriously prejudice” a local authority’s statutory duties in relation to equality could be difficult to interpret in practice. To a large degree the test is subjective and could lead to inconsistency. However, the Council considers that detailed guidance from the SBE could alleviate these issues and ensure a more consistent approach to interpretation.

(ii) Bias

The Council would welcome a reference to the common law rule of bias in the code. Bias is always a significant consideration when a member is deciding whether it is appropriate to take part in the decision making process. It would be of great assistance if there were a reminder in the code that even where a prejudicial interest does not arise, a member must also consider whether their participation in the decision making process would give rise to the real possibility of bias.

(iii) Personal Interests

The Council welcomes the grouping of personal interests within one paragraph. This makes the code more user-friendly. However, the Council finds the interplay between the interests set out in paragraph 7 (a)(iv), (b)(iii) and (c)(iii) confusing.

The interest in paragraph 7(b)(iii) relates to a member's membership of a company. This could involve just one share. Paragraph 7(c)(iii) applies where a member's interest in a company exceeds the nominal value of £5,000. If paragraph 7(b)(iii) is correct it already covers the scenario in paragraph 7(c)(iii) and is in conflict with it. The Council would like these provisions to be reviewed and considers that a member should not have a personal interest where they only hold one share in a company.

Paragraph 7(a)(iv) relates to a interest in a corporate body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower) where the corporate body has a place of business or land in the local authority's area. This is in conflict with paragraph 7(c)(iii). The Council does not consider that the threshold for a personal interest where the business is in the local authority's area should be higher than the threshold for a personal interest where the business, in which the member, their family or friend has an interest, is outside the local authority area.

(iv) Public Service Interest

The Council considers that the provision in paragraph 9(2)(a)(i) relating to financial affairs should be narrowed so that where the authority is not directly responsible for the financing of the public body but is making representations which may have an impact on the funding of it (e.g. representations to central government on the closure of a hospital) the member should be able to make representations and answer questions, otherwise this could mean that members nominated to a public body must withdraw from the meeting where any matter involves the financial affairs of that body.