

BABERGH DISTRICT COUNCIL

FROM: The Monitoring Officer

REPORT NUMBER **F220**

**TO: STANDARDS COMMITTEE AND
COUNCIL**

DATE OF MEETING: 20 April 2007

ADOPTION OF NEW MEMBERS' CODE OF CONDUCT

1. PURPOSE OF REPORT

The Local Authorities (Model Code of Conduct) Order 2007 comes into effect on 3 May 2007. The Order provides a new Code of Conduct for Members which must be adopted by all local authorities before 1 October 2007. The provisions of the Code are mandatory with the very limited exceptions described below.

2. RECOMMENDATION TO COUNCIL

2.1 That the new Members' Code of Conduct shown at Appendix 1. be adopted with immediate effect in replacement of the existing Code contained in Part 5 of the Constitution.

or,

2.2 That the new Members' Code of Conduct shown at Appendix 1. be adopted with immediate effect with an additional requirement to attend training as set out in Appendix 2., in replacement of the existing Code contained in Part 5 of the Constitution.

The Committee is asked to make a recommendation to the Council on the above matter.

3. FINANCIAL IMPLICATIONS

3.1 None

4. RISK MANAGEMENT

Risk Description	Likelihood	Seriousness or Impact	Mitigation Measures
The new Code is not adopted within the mandatory 6 month period from 2.4.07	Low	Very high. The Council would be in breach of statutory duty.	Adoption of the new Code to be considered by Council at the earliest opportunity.

5. **KEY INFORMATION**

- 5.1 The long-awaited revised Code of Conduct for Members has now been published and may be adopted with effect from 3 May 2007. As previously, the Code applies to all local authorities, parish councils, fire and police authorities. Under section 51(5) of the Local Government Act 2000, the mandatory provisions of the new Code must be adopted by the Council within 6 months of the Order being made (i.e. before 1 October 2007).
- 5.2 For this Council, all parts of the Code are mandatory with the exception of references to the authority's "executive" and "area committees" which only apply to authorities that operate executive arrangements. Since these provisions would simply be inoperative in relation to Babergh Members, it is advised that there is no requirement to delete these references from the Code that is adopted.
- 5.3 The Council could decide to adopt more onerous provisions than those contained in the model Code. It is not recommended that the Council do so save that Members may wish to consider making training on the Code a compulsory requirement. A suggested form of wording is shown at Appendix 2. in the event that Members are minded to take this approach.
- 5.4 The new Code is in similar format to the existing Code, but with a number of key changes:-

Paragraph 3 – General obligations

- 5.4.1 There is a new obligation on Members not to do anything which may cause the Council to breach any of its duties under equalities legislation such as those relating to age/disability/race/sex discrimination.
- 5.4.2 There is new provision not to bully any person. Bullying is not defined under the Act, but it is anticipated that the Standards Board will issue guidance.
- 5.4.3 There is a new duty not to intimidate or attempt to intimidate any person who is likely to be a complainant, witness or involved in any investigation or proceedings against the Member concerning the code of conduct.
- 5.4.4 The duty to report another Member to the Standards Board who is believed to be in breach of the Code has been removed.
- 5.4.5 There is new provision concerning confidential information. Information provided in confidence or which the Member believes or ought reasonably to be aware is confidential, must not be disclosed except:-
- with the consent of an authorised person
 - where required by law
 - where the disclosure is to a third party for the purposes of providing professional advice and the third party agrees to keep the information confidential
 - the disclosure is reasonable and in the public interest, made in good faith and in compliance with the reasonable requirements of the authority

A Member must not prevent anyone from gaining access to information to which they have a legal entitlement.

Personal Interests

- 5.4.6 The categories of personal interest remain the same, but now additionally include any business relating to the interests of any person from whom a Member has received a gift or hospitality with estimated value of £25 or more within the 3 years before the meeting in question.
- 5.4.7 There has also been a re-word of the personal interest provisions to list the categories of personal interest that must be declared rather than reference to the Register of Interests. Of most significance is that a personal interest will arise if the matter relates to the well-being or financial position of “a relevant person” which includes a family member “or any person with whom [the Member] has a close association”. This replaces reference to a “relative or friend” under the existing Code and is intended to encompass close business associates. The list of family Members has been removed.
- 5.4.8 A key difference is that personal interests are declared at the start of the item under consideration (or when the interest becomes apparent) instead of at the start of the meeting. In certain circumstances, however, the interest need only be declared if and when the member addresses the meeting, being:-
- where the interest arises from membership of a body to which the member has been appointed or nominated by the Council
 - where the interest arises from a position of general control or management of a body to which the member has been appointed or nominated by the Council
 - where the interest arises from a body exercising functions of a public nature (e.g. parish council)
- 5.4.9 Information need not be included in the Register of Interests where the Monitoring Officer agrees that it is “sensitive information” meaning that it’s disclosure would create a serious risk of violence or intimidation to the Member or any person living with them. In such cases, the existence of a personal interest need only be declared without disclosing details.

Prejudicial Interests

- 5.4.10 The test for a prejudicial interest remains the same i.e. where a personal interest exists 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. However, there are significant exceptions. A prejudicial interest will not arise in the following circumstances:-
- where the business does not affect the financial position of the Member or those of the bodies or persons in connection with whom a personal interest would arise
 - where the business does not relate to the determination of any approval, consent, licence, permission or registration relating to the Member or any body or person in connection with whom a personal interest would arise
 - where the business relates to the functions of the Council in respect of housing and the Member is a tenant of the Council (provided the matter does not relate to the Member’s tenancy)

- where the business relates to the functions of the Council in respect of school meals, school transport and travelling expenses where the Member is a parent or guardian of a child in full-time education or is a parent-governor, unless the matter relates to the school to which the child attends
- where the business relates to the functions of the Council in respect of statutory sick pay where the Member is in receipt of or entitled to such pay
- where the business relates to the functions of the Council for any allowance, payment or indemnity given to Members
- where the business relates to the functions of the Council for any ceremonial honour given to Members
- where the business relates to the functions of the Council in setting the council tax or a precept

Effect of Prejudicial Interests

5.4.11 Another significant provision entitles Members with a prejudicial interest to attend any meeting which is open to the public for the purpose of making representations, answering questions or giving evidence relating to the business. The Member must then immediately leave the room.

6 APPENDICES

- (a) Appendix 1 - Form of Members' Code of Conduct
- (b) Appendix 2 – Additional paragraph 7A

7 BACKGROUND PAPERS REFERRED TO:

The Local Authorities (Model Code of Conduct) Order 2007

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Members Code of Conduct

Part 1 **General provisions**

Introduction and interpretation

1. —(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(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) the executive of the authority;

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees;

"member" includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority's monitoring officer and an authority's standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2. —(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.

General obligations

3. (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.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

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 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 your authority—

(i) act in accordance with your 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) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2

Interests

Personal interests

8. —(1) You have a personal interest in any business of your 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 your 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 your 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 your 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 your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your 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—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your 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).

Disclosure of personal interests

9. —(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your 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 your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(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 8(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 14, sensitive information relating to it is not registered in your 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.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, "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.

Prejudicial interest generally

10. (1) Subject to sub-paragraph (2), where you have a personal interest in any business of your 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 8;

(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 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12. —(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your 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 your authority's standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, 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

Registration of members' interests

13. —(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your 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 8(1)(a), by providing written notification to your authority's monitoring officer.

(2) Subject to paragraph 14, 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 your authority's monitoring officer.

Sensitive information

14. —(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's 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 13.

(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 your authority's monitoring officer asking that the information be included in your 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.

ANNEXURE – THE TEN GENERAL PRINCIPLES

The general principles referred to in paragraph 1(2) of the Code governing your conduct under The Relevant Authorities (General Principles) Order 2001 are set out below:

Selflessness

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

Honesty and Integrity

2. 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

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

Accountability

4. 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

5. 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

6. Members may take account of the views 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

7. 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

8. 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

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

Leadership

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

Appendix 2.

7A. (1) You must attend a session of training provided by the Monitoring Officer on the code of conduct

- (a) within three months from the date upon which you are first elected to the Council after 1 May 2002; and
- (b) within three months from the date upon which this code of conduct is revised or replaced

(2) You need not comply with the requirement in (1) if the training session offered or all such training sessions offered were held at a time or location which you could not reasonably attend.