

**NEW FOREST NATIONAL PARK AUTHORITY**

**AUTHORITY MEETING – 22 FEBRUARY 2007**

**STANDARDS COMMITTEE – 26 FEBRUARY 2007**

**CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF CONDUCT**

Report by: Kevin Gardner, Solicitor and Monitoring Officer

**Summary**

The Government is consulting on amendments that it proposes to make to the Model Code of Conduct for local authority members (“the Code”). This report summarises the proposed changes and offers comments upon them. Members of the Authority are invited to consider these and add any further comments they wish to make on the proposals. Members are also asked to authorise the Solicitor and Monitoring Officer, in consultation with the Chairman of the Standards Committee, to finalise the Authority’s response to the consultation, having regard to Members’ comments, and any further comments made by the members (including independent members) of the Standards Committee, following its consideration of this report on 26 February.

**Recommendation**

**Members are recommended to:**

- 1. Consider the commentary on the proposed revisions to the Code and make any further comments Members may wish to make, and**
- 2. Authorise the Solicitor and Monitoring Officer, in consultation with the Chairman of Standards Committee, to finalise the Authority’s response to the consultation, taking on board comments expressed by Members and by the Standards Committee.**

**Resources**

Routine

## **Corporate Plan: Objective A1**

### **Paper**

NFNPA 159/07 Cover paper  
NFNPA/SC13/07) Cover paper

### **Contact**

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**1 Background**

- 1.1 All local authorities, including national park authorities, are obliged to adopt a code setting out the standards of conduct to be observed by their members. Members are then required to sign an undertaking to observe the code in performing their functions. A model code of conduct is issued by the Secretary of State, most conditions of which are mandatory for authorities to adopt. The Authority adopted its own [Code of Conduct](#), based on the model code for national park authorities, on 11 April 2005.
- 1.2 The first model code was introduced in 2001. In 2005, the Standards Board consulted on the need for amendment and clarification, in the light of experience of its operation in practice. Recommendations were made to the Government, who then published a response to those recommendations in December 2005. This indicated that the Government intended to amend the Code to make it clearer and more proportionate, while maintaining a rigorous approach to the identification of serious misconduct. These intentions were further confirmed in the Local Government White Paper “Strong and Prosperous Communities” published in October 2006.
- 1.3 The current consultation, on actual draft amendments to the Code, continues until 9 March 2007. It is expected that the amendments will then be finalised via a statutory instrument coming into force in time for local elections in May 2007. All authorities would then need to consider adopting the revised model code.
- 1.4 The consultation paper, entitled [“Consultation on Amendments to the Model Code of Conduct for Local Authority Members”](#), is published on the Department for Communities and Local Government website, and details of this have been circulated to Members. The consultation paper is not therefore reproduced as an

appendix to this report. Any member wishing to receive a hard copy of the consultation paper can do so by contacting Member services.

- 1.5 This report summarises the key proposed changes to the Code with, in each case, a commentary on the proposal. Paragraph numbers included in headings refer to paragraphs in the proposed revised model code.

## **2 Proposed Amendments and Commentary**

### **2.1 *Unlawful Discrimination (paragraph 2(2)(a))***

The current model code provides that a member must promote equality by not discriminating unlawfully against any person. It is proposed to replace this with a provision preventing members from doing anything that would seriously prejudice their authority's statutory duties in relation to equality.

Commentary:

This proposal stems from clarification that the making of a finding of unlawful discrimination is outside the remit of an Adjudication Panel. The revised, broader wording makes sure therefore that the model code's provision in this important area is enforceable. While this is welcome, it should be noted that the emphasis has changed, from being a positive duty to promote equality, to one to refrain from doing anything that may prejudice it. Public authorities have a duty under equalities legislation to promote equality, and it is suggested that members have an important leadership role in this. This would be addressed, without compromising enforceability, by providing for a duty "to promote equality and to not do anything that would seriously prejudice their authority's statutory duties in relation to equality."

### **2.2 *Bullying (paragraph 2(2)(b))***

It is proposed to include a new provision stating that a member must not bully any person.

Commentary:

The current model code provides that a member must treat others with respect, and not bring their office into disrepute. The Standards Board has received numerous complaints, under these aspects of the model code, relating to incidents of bullying in certain authorities. This new provision is intended to make it clear that bullying behaviour, whether of other members or officers, has no part in members' conduct, and as such should be welcomed.

### 2.3 *Disclosure of Confidential Information (paragraph 3(a)(iii))*

The code currently provides that a member should not disclose information given in confidence, or which the member believes to be of a confidential nature. It is proposed to amend this to say that a member may disclose confidential information provided this is reasonable and in the public interest, and is made in good faith and does not breach any reasonable requirements of the authority.

Commentary:

The inclusion of a “public interest” exemption from this duty is designed to make the code compliant with human rights law. The consultation paper indicates that guidance would be issued to the effect that disclosure would be permissible in certain circumstances e.g. where the member has evidence of an offence being committed, or of damage to the environment.

It is suggested that such guidance should make it clear that the inclusion of this as a new provision in the code is to reflect the law, and not to undermine the importance generally of maintaining confidentiality. It should be clear that disclosure would normally only be permitted in serious “whistleblowing” type cases. Further, it should be noted that the provisions now applied by authorities, to determine whether reports should be considered at meetings in confidential session, include consideration of a public interest test. Where an authority has decided in any such case that the public interest is in favour of maintaining confidentiality, it should not then be open to any one member to reach a different conclusion on where the public interest lies.

### 2.4 *Behaviour Outside Official Duties (paragraphs 4 and 5)*

The model code currently provides that a member must not in his or her official capacity, or any other circumstance, conduct themselves in a manner which could reasonably be regarded as bringing their office or authority into disrepute. The model code further provides that a member must not in his or her official capacity or any other circumstance use their position as a member improperly to secure an advantage or disadvantage.

The decision of the High Court in October 2006, in the case of the Mayor of London, clarified that conduct in a member’s private capacity can only come within the scope of the model code where there is a direct link between that conduct and the member’s office. As a result, behaviour in a totally private capacity e.g. a conviction for drunk driving, will not now be caught by the current code if it had nothing to do with the member’s position within the authority.

The proposal is to seek the necessary amendments to the Local Government Act 2000 to restore the principle that conduct in a private capacity, which may affect a member’s reputation or the public’s confidence in them, can come within the remit of the Code. However, the intention would be to restrict the application of the

code to private behaviour for which the member has been convicted by a court. This would include a case where the offence is committed before taking office, with the conviction occurring after becoming a member.

Commentary:

The decision in the Mayor of London case has given rise to some uncertainty as to precisely when private conduct may come within the scope of the Code. Clarification that a conviction for conduct in a private capacity is within the scope of the model code provides much greater certainty. However, there may be other types of private conduct, that are not criminal in nature, which could nevertheless be regarded as undermining reputation or public confidence. An example would be where a member, acting in a private capacity, flouted his authority's policies on the protection of the environment. It will be noted that the conduct of the Mayor that was the subject of the High Court case would still not be covered by the proposed revised model code.

## 2.5 *Using or Seeking to Use Improper Influence (paragraph 5(a))*

The code currently provides one must not use one's position as a member improperly to confer on or secure for himself, herself or any other person an advantage or disadvantage. This is to be extended to include unsuccessful attempts to confer or secure such advantage.

Commentary:

Agreed.

## 2.6 *Publicity Code (paragraph 5(b)(iii))*

This is a new provision stating that, when using or authorising use by others of the authority's resources, a member must have regard to the Publicity Code issued under the Local Government Act 1986.

Commentary:

The Publicity Code provides instructions about content, style and distribution of promotional activity by local authorities, supplementing the basic requirement of the 1986 Act that authorities must not use their resources for political purposes. It does not currently apply to national park authorities (along with fire and rescue authorities), and views are invited as to whether it should.

The consultation paper does not make out a case for extending the application of the Code to national park authorities, and in the absence of this it is difficult to see what additional value this would bring. The Publicity Code may be more appropriate to local authorities that are organised on party political lines. It is proposed to retain the general requirement not to use resources improperly for

political purposes, and it is suggested that this is a sufficient basis on which to let the matter rest.

## 2.7 *Reporting Breaches of the Code*

The current duty to report breaches of the Code by other members is to be removed, as this has led to numerous trivial breaches being reported.

Commentary:

There is evidence that cases have been referred to the Standards Board so that the member reporting it has “covered their back”. This would no longer be required, although Members would still be free to report breaches by other members where they felt this was merited. It is likely to result in investigative resources being deployed on only the more serious allegations.

## 2.8 *Gifts and Hospitality (paragraphs 7(a)(vi) and 8(3))*

Under the current code, where a member receives any gift or hospitality over the value of £25, they must notify their authority’s monitoring officer. There is no requirement for that notification to be made public. It is proposed to revise this so that it is declared in the Register of Members’ Interests, and so that it constitutes a personal interest to be declared at a meeting, for five years from the date of its receipt.

Commentary:

The aim here is to reinforce principles of transparency, but views are invited as to whether this is a proportionate response. In practice, very few notifications are received, which suggests that declaration in the way described would not be unduly onerous for members. However, an alternative and probably easier way of dealing with the matter would be to simply make the register of notifications to the Monitoring Officer open to public inspection.

## 2.9 *Interests of Family, Friends and those with close personal association (paragraph 7(c)(i))*

Under the current code, a member must regard himself as having a personal interest in a matter if a decision on it affects to a greater extent than other inhabitants of the area the well-being or financial position of himself, a relative or friend. This grouping is to be extended to include any person with whom the member has a “close personal association”.

Commentary:

”Close personal association” is not defined, although it is indicated that guidance on interpretation will be given by the Standards Board. It is intended that this

should include professional and business associates as well as friends. However, the fact that guidance would need to be issued acknowledges the ambiguity of the term. There is a danger that Members inadvertently fail to declare a personal interest through being unclear whether or not their relationship with a third party constitutes a close personal association. Further thought should be given to whether introducing such uncertainty is advisable or proportionate.

#### 2.10 *Definition of Personal Interests (paragraph 8)*

Currently, a member has a personal interest if they would be affected by a matter to a greater extent than other council tax payers, rate payers or inhabitants of the authority's area as a whole. In the case of authorities with electoral divisions or wards, this would be made narrower, to refer to council tax payers, rate payers or inhabitants of the division or ward affected by the particular matter. For other authorities, there would be no change.

Commentary:

This change would mean that a personal interest was less likely to arise where the member shared a similar interest with many other people in the immediate neighbourhood or locality to which a matter related. This is likely to result in more occasions where members are able to participate in consideration of matters affecting their local area, and is to be welcomed. However, no reason is given as to why a narrower test could not also apply to national park authorities. The consultation paper states that reference to the whole area will remain for parish councils, as their areas so small. It would appear that the position of national park authorities, with bigger administrative areas than parish councils, but no electoral divisions or wards, has been overlooked. This should be addressed, perhaps with a narrower test referring to the immediate neighbourhood or locality to which the matter relates.

#### 2.11 *Disclosure of Personal Interests (paragraph 8.4)*

This clarifies that a member is only obliged to disclose a personal interest of a family member, friend or person with close personal association where they are aware or ought reasonably to be aware of it.

Commentary:

Agreed.

#### 2.12 *Public Service Interests (paragraphs 8(2) and 8(7))*

This is a new category of personal interest, where the interest arises as a result of being a member of another public body. The interest would only need to be declared at such time as a member speaks on the particular issue, rather than at

the start of the meeting or debate. This is to avoid members with such interests having to declare their interest if they do not intend to participate in the debate.

Further, a public service interest would only amount to a prejudicial interest where the matter related to the financial affairs of the other public body concerned, or where it related to a planning or regulatory decision in relation to that body. Where either of these situations applied, the member could attend the meeting to make representations, but then withdraw from the meeting before a decision was made. In all other situations, the public service interest would not be prejudicial, and the member could speak and vote on the matter.

Commentary:

This new category of interest would be of particular relevance to Authority members, many of whom have personal interests as a result of membership of other public bodies. It is likely to reduce the need to declare interests at the outset of meetings, although some may think that having a systematic discussion of interests is a useful discipline. It would also reduce the number of cases where members have to declare prejudicial interests and leave the room for consideration of an item, by virtue of their involvement in another public body e.g. local authority.

However, further consideration needs to be given to the definition of “public service interest”. While the term is defined in paragraph 8(7)(a) in terms of membership of another public body, or body that the member has been appointed to by their authority, paragraph 11(3)(b) suggests that for certain purposes the term will also include membership of a “charity, lobbying or philanthropic body”. This will be of particular interest to Authority members who are also members of bodies falling within this description. It should be confirmed that such interests are included within the definition for all purposes.

### 2.13 *Prejudicial Interests (paragraphs 9 and 11)*

A member will not have a prejudicial interest where they attend a meeting to make representations, answer questions or give evidence, provided the meeting agrees the member may do so, and provided they then withdraw from the room.

Provisions are to be deleted from the model code that enable members of national park authorities to regard themselves as not having a prejudicial interest where the interest relates to farming, land or navigation.

Commentary:

There could be a range of circumstances in which a meeting is asked to agree that a member attend before it to make representations, from the relatively trivial to ones where the public's confidence in the Authority's propriety could be at risk. It may assist for the Standards Board to issue guidance, perhaps in the form of

criteria, to determine whether or not members should be enabled to make representations in particular circumstances.

The deletions from the Code are at the request of DEFRA and would avoid the risk of preferential treatment being given.

### **3 Recommendations**

#### **3.1 Members are recommended to:**

**3.1.1. Consider the commentary on the proposed revisions to the Code and make any further comments Members may wish to make, and**

**3.1.2 Authorise the Solicitor and Monitoring Officer, in consultation with the Chairman of Standards Committee, to finalise the Authority's response to the consultation, taking on board comments expressed by Members and by the Standards Committee.**