

5. SUGGESTED NEW CODE OF CONDUCT FOR MEMBERS AND THE APPOINTMENT ARRANGEMENTS FOR THE INDEPENDENT MEMBERS REQUIRED UNDER THE LOCALISM ACT 2011

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Wards Affected: All
Key Decision No

1. Purpose of the Report

- 1.1 To consider a "Sussex" Code of Conduct for Members post the 1st July 2012 and to consider appointment arrangements for the independent members required under the Localism Act 2011.

2. Summary

- 2.1 Along with East and West Sussex County Councils the report suggests we adopt the comprehensive Code of Conduct as opposed to the more shortened version.
- 2.2 On the independent members it is suggested that we appoint our own 2 independent members to cover the requirements of the Localism Act 2011 and for them to join the Standards Committee as non-voting members. There is a proposal in West Sussex to have a pool of independent members but this report does not recommend we join that pool.

3. Recommendations to Council:

- 3.1 **the adoption of the Members Code of Conduct in the style of Appendix 1 for use by all District Members from the 1st July 2012.**
- 3.2 **the appointment of 2 independent members in May 2012 with a term of office of 4 years starting from the 1st July 2012.**
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4. The Code of Conduct going forward.

- 4.1 Members have considered two earlier reports, following the enactment of the Localism Act 2011, on the Members Code of Conduct we are required to have for District members which must accord with the Nolan principles for public service.
- 4.2 Along with East and West Sussex County Councils we have indicated that we would like a Code of Conduct that closely follows the existing Code of Conduct and note that the LGA are working on such a proposal. The promised time line for the LGA proposal has not been met.
- 4.3 The "Sussex" County Councils have now come forward with a Code of Conduct in a comprehensive form and this is shown at Appendix 1. Members are asked to recommend a Code in this form to Council for use by all District Council members from the 1st July 2012.

5. Independent Members

- 5.1 At the meeting of the 1st December 2011 and the 11th January 2012 you discussed the role of independent members in the new Constitution. It was noted that the independent members could not be part of the assessment, review and hearings teams given their role to help both those who reported a breach of a Code of Conduct and those in receipt of such a breach but you requested that they form part of the Council's continuing Standards Committee. It is therefore suggested that the Council advertise for 2 independent members in May 2012 whose office will commence from the 1st July 2012.
- 5.2 The interview panel should be the Leader of the Council, the Cabinet Member for Finance and the Leader of the Liberal Democrats or the named substitutes of those persons. The Monitoring Officer will also be in attendance to advise. The recommendations from that panel will come to full Council for confirmation in June 2012.

6. Financial Implications

- 6.1 The Council currently has 4 independent members sitting on its Standards Committee that receive an allowance. With only 2 independent members there will be an allowance saving.

7. Other Options Considered

- 7.1 Some authorities in West Sussex are considering having a pool of independent members to call on. Given your desire to have independent members feeding into your Standards Committee I have indicated that we would not wish to join that pool.

8. Equalities Implications.

- 8.1 The independent member posts will be open to residents of the District who have not had any involvement with the Standards Committee or being an elected member of the Authority in that last 5 years, albeit that there is a transitional provision until 2013 that allows such involvement provided the applicant member is not currently a member of the Council's Standards Committee at the time of application.

9 Legal Implications

- 9.1 The relevant provisions of the Localism Act 2011 come into force on the 1st July 2012, when the new regime will apply. Until that date the existing regime continues and Members need to comply with the existing Code of Conduct. Town and Parish Councils will also need to adopt a Members Code of Conduct in accordance with the Nolan principles for public service.

Appendix 1.

Mid Sussex District Council

Code of Conduct for Members

On their election or co-option to the Mid Sussex District Council, members are required to sign an undertaking to comply with the authority's Code of Conduct.

This Code of Conduct, adopted by the authority on [add date], is set out below. It is made under Chapter 7 of the Localism Act 2011 and includes, as standing orders made under Chapter 7 of that Act and Schedule 12 of the Local Government Act 1972, provisions which require members to leave meetings in appropriate circumstances, while matters in which they have a personal interest are being considered.

Part 1 – General provisions

Introduction and interpretation

1. —(1) This Code applies to **you** as a member of the authority, when acting in that capacity.

(2) This Code is based upon seven principles fundamental to public service, which are set out in **Appendix 1**. You should have regard to these principles as they will help you to comply with the Code.

(3) If you need guidance on any matter under this Code you should seek it from the authority's monitoring officer or your own legal adviser – but it is entirely your responsibility to comply with the provisions of this Code.

(4) It is a criminal offence to fail to notify the authority's monitoring officer of a disclosable pecuniary interest, to take part in discussions or votes at meetings, or to take a decision where you have disclosable pecuniary interest, without reasonable excuse. It is also an offence to knowingly or recklessly to provide false or misleading information to the authority's monitoring officer.

(5) Any written allegation received by the authority that you have failed to comply with this Code will be dealt with by the authority under the arrangements which it has adopted for such purposes. If it is found that you have failed to comply with the Code, the authority has the right to have regard to this failure in deciding -

(a) whether to take action in relation to you and

(b) what action to take.

(6) In this Code—

“authority” means Mid Sussex District Council

“Code” means this Code of Conduct

“co-opted member” means a person who is not a member of the authority but who-

(a) is a member of any committee or sub-committee of the authority, or

(b) is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority,

and who is entitled to vote on any question that falls to be decided at any meeting of that committee or sub-committee.

"meeting" means any meeting of—

(a) the authority;

(b) the executive of the authority; [*authorities using a committee system should delete (b)*]

(c) any of the authority's or its executive's committees, sub-committees, joint committees, joint sub-committees, or area committees; [*authorities using a committee system should delete “or its executive’s”*]

"member" includes a co-opted member.

“register of members’ interests” means the authority's register of members' pecuniary and other interests established and maintained by the authority's monitoring officer under section 29 of the Localism Act 2011.

Scope

2. —(1) Subject to sub-paragraphs (2) and (3), 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) This Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) 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 its the equality duties (in particular as set out in the Equality Act 2010);

(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

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- (iv) the disclosure is—
 - (a) reasonable and in the public interest; and
 - (b) made in good faith and in compliance with the reasonable requirements of the authority; or
 - (c) 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;

(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) The interests described in paragraphs 8(3) and 8(5) are your personal interests and the interests in paragraph 8(5) are your pecuniary interests which are disclosable pecuniary interests as defined by section 30 of the Localism Act 2011.

(2) If you fail to observe Parts 2 and 3 of the Code in relation to your personal interests-

(a) the authority may deal with the matter as mentioned in paragraph 1(5) and

(b) if the failure relates to a disclosable pecuniary interest, you may also become subject to criminal proceedings as mentioned in paragraph 1(4).

(3) 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—

(a) exercising functions of a public nature;

(b) directed to charitable purposes; or

(c) 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 (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;

(4) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or a [close] friend; 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).

(5) Subject to sub-paragraphs (6) and (7), you have a personal interest which is also a disclosable pecuniary interest as defined by section 30 of the Localism Act 2011 in any business of your authority where (i) you or (ii) your partner-
[add list of interests]

(6) In sub-paragraph (5), your partner means—

(a) your spouse or civil partner,

(b) a person with whom you are living as husband and wife, or

(c) a person with whom you are living as if you were civil partners,

(7) In sub-paragraph (5), any interest which your partner may have is only treated as your interest if you are aware that that your partner has the interest.

Disclosure of personal interests (See also Part 3)

9. —(1) Subject to sub-paragraphs (2) to (6), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which any matter relating to 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) If the personal interest is entered on the authority's register there is no requirement for you to disclose the interest to that meeting, but you should do so if you wish a disclosure to be recorded in the minutes of the meeting.

[jh1]

(3) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(4) 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 and, if also applicable, that it is a disclosable pecuniary interest, but need not disclose the sensitive information to the meeting.

(5) 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 on any matter in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest. *[Authorities using a committee system should delete (5)]*

(6) 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. *[Authorities using a committee system should delete (6)]*

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 either-

(a) the interest is a disclosable pecuniary interest as described in paragraph 8(5), or

(b) 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) For the purposes of sub-paragraph (1)(b), 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.

Interests arising in relation to overview and scrutiny committees

11. You also have a personal 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.

[Authorities using a committee system should amend 11 as appropriate.]

Effect of prejudicial interests on participation

12. —(1) Subject to sub-paragraph (2) and (3), where you have a prejudicial interest in any matter in relation to the business of your authority—

(a) you must not participate, or participate further, in any discussion of the matter at any meeting, or participate in any vote, or further vote, taken on the matter at the meeting and must withdraw from the room or chamber where the meeting considering the matter 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 matter is being considered at that meeting;

unless you have obtained a dispensation from your authority's monitoring officer or standards committee;

(b) you must not exercise executive functions in relation to that matter
[Authorities using a committee system should delete (b)]; and

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

(2) Where you have a prejudicial interest in any business of your authority which is not a disclosable pecuniary interest as described in paragraph 8(5), 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.

(3) Where you have a prejudicial interest which is not a disclosable pecuniary interest as described in paragraph 8(5), arising solely from membership of any body described 8(3)(a)(i) or 8(3)(a)(ii)(a) then you do not have to withdraw from the room or chamber and may make representations to the committee but may not participate in the vote.

Part 3 – Registration of Interests

Registration of members' interests

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

(a) this Code being adopted by the authority; or

(b) your election or appointment to office (where that is later), register in the register of members' interests details of-

- (i) your personal interests where they fall within a category mentioned in paragraph 8(3)(a) and
- (ii) your personal interests which are also disclosable pecuniary interests where they fall within a category mentioned in paragraph 8(5)

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 falling within sub-paragraphs (1)(i) or (1)(ii) or any change to any personal interest registered under sub-paragraphs (1)(i) or (1)(ii), 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, the monitoring officer shall not include details of the interest on any copies of the register of members' interests which are made available for inspection or any published version of the register, but may include a statement that you have an interest, the details of which are withheld under this paragraph.

(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 the register of members' interests.

(3) In this Code, "sensitive information" means information, the details of which, if disclosed, could lead to you or a person connected with you being subject to violence or intimidation.

Dispensations

15 - (1) The standards committee, or any sub-committee of the standards committee, or the monitoring officer may, on a written request made to the monitoring officer of the authority by a member, grant a dispensation relieving the member from either or both of the restrictions in paragraph 12(1)(a) (restrictions on participating in discussions and in voting), in cases described in the dispensation.

(2) A dispensation may be granted only if, after having had regard to all relevant circumstances, the standards committee, its sub-committee, or the monitoring officer—

(a) considers that without the dispensation the number of persons prohibited by paragraph 12 from participating in any particular business would be so great a proportion of the body transacting the business as to impede the transaction of the business,

(b) considers that without the dispensation the representation of different political groups on the body transacting any particular business would be so upset as to alter the likely outcome of any vote relating to the business,

(c) considers that granting the dispensation is in the interests of persons living in the authority's area,

(d) if it is an authority to which Part 1A of the Local Government Act 2000 applies and is operating executive arrangements, considers that without the dispensation each member of the authority's executive would be prohibited by paragraph 12 from participating in any particular business to be transacted by the authority's executive, [*Authorities using a committee system should delete (d)*]; or

(e) considers that it is otherwise appropriate to grant a dispensation.

(2) A dispensation must specify the period for which it has effect, and the period specified may not exceed four years.

(3) Paragraph 12 does not apply in relation to anything done for the purpose of deciding whether to grant a dispensation under this paragraph.

APPENDIX 1

The Seven Principles of Public Life

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. **Members should show integrity by consistently treating other people with respect, regardless of their race, age, religion, gender, sexual orientation, disability or position, for example as an officer or employee of the authority.**

Objectivity

3. Members should make decisions **in accordance with the law and** 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.

Honesty

6. **Members should not place themselves in situations where their honesty may be questioned, should not behave dishonestly and should on all occasions avoid the appearance of such behaviour.** Members should declare any private interests relating to their public duties ~~and to their public duties~~ and take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

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