

The Vale of Glamorgan Council

Council: 27th April, 2016

Report of the Monitoring Officer

The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016

Purpose of the Report

1. To apprise Members of the provisions of the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 and amend the Council's Members' Code of Conduct to comply with the same.

Recommendations

1. THAT the provisions of the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 be adopted and incorporated within the Members' Code of Conduct contained in the Council's Constitution.
2. THAT the Monitoring Officer ensures that the requirements of section 51(6) of the Local Government Act 2000 are adhered to.

Reasons for the Recommendations

1. To ensure the Members' Code of Conduct reflects the provisions of the above Order.
2. To comply with the statutory obligation.

Background

2. The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 amends existing subordinate legislation made under Part III of the Local Government Act 2000, consequential upon provisions in the Local Government (Democracy) (Wales) Act 2013 ("the 2013 Act"). The Order comes into force on 1st April, 2016.

Relevant Issues and Options

3. The Order amends the Model Code of Conduct for Local Government Members (the existing provisions of which are reflected in the Members' Code of Conduct contained in the Council's Constitution). The main amendments are as follows:
 - The 2013 Act transferred responsibility for maintaining the Register of Interests of Members of Community Councils from the Monitoring Officer of the Principal Local Authority for the area to the 'Proper Officer' of each Community Council with effect

from 1st May, 2015. A number of consequential amendments are made to the Model Code to reflect this change.

- The Model Code is also amended to clarify that, in terms of the Register of Members' Interests, any interest disclosed for the first time must be entered in the Register. This is not a change of policy, but clarifies the original intention. The exemption for Community Councillors from the requirement to register certain financial and other interests up front is maintained.
 - The obligation on a Member to report a potential breach of the Code of Conduct to the Public Services Ombudsman for Wales is now omitted from the Code. However, there continues to be the obligation to report such matters to the Monitoring Officer.
 - Paragraph 18.3.1(K) of the Code is now omitted. This is to overcome unintended difficulties in the practical application of this paragraph in relation to participation in business relating to constituency interests. Nevertheless, a Member participating in the consideration of a Ward matter is still under an obligation to act objectively and in the wider public interest in accordance with paragraph 18.2.9 of the Code. For ease of reference Paragraph 18.3.1 (K) required a member to regard himself/herself as having a personal interest in any business of its authority if:..... "a member of the public might reasonably perceive a conflict between your role in taking a decision, upon that business, on behalf of your authority as a whole and your role in representing the interests of constituents in your ward or electoral division".
4. Other minor changes have been made and they are also incorporated in the revised Members' Code of Conduct, at Appendix A.
 5. This matter was considered by the Standards Committee on 15th April 2016 and it was resolved that that the provisions of the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 be noted and incorporated within the Members' Code of Conduct contained in the Council's Constitution.

Resource Implications (Financial and Employment)

6. There are no direct implications arising from this report.

Sustainability and Climate Change Implications

7. There are no direct implications arising from this report.

Legal Implications (to Include Human Rights Implications)

8. All relevant Authorities must within six months of the Amendment Order adopt a revised Code of Conduct. The Order was made on 27th January, 2016 and, therefore, the Council has until 26th July, 2016 in which to adopt a revised Code. However, it has been suggested by Welsh Government that it would be sensible for Local Authorities to do so no later than at their 2016 Annual Meeting.
9. There is no legal requirement for existing Members to sign a further declaration mid-term undertaking to observe the Members' Code of Conduct as amended, given that the current declaration extends to revisions of the Members' Code of Conduct.
10. Section 51(6) of the Local Government Act 2000 requires the Authority as soon as reasonably practicable after revising its Members' Code of Conduct:
 - to ensure that copies are available at an office of the authority for inspection by the public at all reasonable hours;

- to publish in one or more newspaper circulating in the area a notice which states that the Authority has revised the Code and made it available for inspection; and
- to send a revised copy of the Code to the Public Services Ombudsman for Wales.

Crime and Disorder Implications

11. There are no direct implications arising from this report.

Equal Opportunities Implications (to include Welsh Language issues)

12. There are no direct implications arising from this report.

Corporate/Service Objectives

13. To ensure compliance with statutory obligation.

14. The Constitution is part of the framework supporting the Council's commitment to provide political leadership and active relationship and engagement.

Policy Framework and Budget

15. This matter is for determination by Full Council.

Consultation (including Ward Member Consultation)

16. This is an internal matter and consultation is, therefore, not necessary.

Relevant Scrutiny Committee

17. None.

Background Papers

The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016.

Contact Officer

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Officers Consulted

Head of Democratic Services

Responsible Officer:

Ms. D. Marles
Monitoring Officer

SECTION 18

18. CODE OF CONDUCT FOR MEMBERS

Part 1 - Interpretation

18.1 Interpretation

18.1.1 In this code:

“Co-Opted Member” in relation to a relevant authority, 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 which falls to be decided at any meeting of that committee or sub-committee;

“meeting” means any meeting:

- (a) of the relevant authority;
- (b) of any Executive or board of the relevant authority;
- (c) of any committee, sub-committee, joint committee or joint sub-committee of the relevant authority or of any such committee, sub-committee, joint committee or joint sub-committee of any Executive or board of the Authority; or
- (d) where Members or Officers of the relevant authority are present other than a meeting of a political group constituted in accordance with Regulation 8 of the Local Government (Committees and

Political Groups) Regulations 1990.

"Member"	includes, unless the context requires otherwise, a Co-Opted Member;
"register of Members' interests"	means: the register established and maintained under Section 81 of the Local Government Act 2000
"relevant authority"	means: (a) a county council; (b) a county borough council; (c) a community council; (d) a fire and rescue authority constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004(2) or a scheme to which section 4 of that Act applies; (e) a National Park authority established under section 63 of the Environment Act 1995(3);
"you"	means you as a Member or Co-Opted Member of a relevant authority; and
"your authority"	means the relevant authority of which you are a Member or Co-Opted Member.

18.1.2 In relation to a community council -

(a) "Proper Officer" means an officer of that council within the meaning of Section 270(3) of the Local Government Act 1972 and

(b) "Standards Committee" means the Standards Committee of the county or county borough council which has functions in relation to the community council for which it is responsible under Section 56(1) and (2) of the Local Government Act 2000.

Part 2 – General Provisions

18.2 General Provisions

18.2.1 Save where paragraph 18.2.3 applies, you must observe this Code of Conduct:

- (a) whenever you conduct the business, or are present at a meeting, of your authority;
- (b) whenever you act, claim to act or give the impression you are acting in the role of Member to which you were elected or appointed;
- (c) whenever you act, claim to act or give the impression you are acting as a representative of your authority; or
- (d) at all times and in any capacity, in respect of conduct identified in paragraphs 18.2.6 and 18.2.8.

18.2.2 You should read this Code together with the general principles prescribed under section 49(2) of the Local Government Act 2000 in relation to Wales.

18.2.3 Where you are elected, appointed or nominated by your authority to serve:

- (a) **on another relevant authority, or any other body, which includes a Local Health Board** you must, when acting for that other authority or body, comply with the Code of Conduct of that other authority or body; or
- (b) on any other body which does not have a code relating to the conduct of its Members, you must, when acting for that other body, comply with this Code of Conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

18.2.4 You must:

- (a) carry out your duties and responsibilities with due regard to the principle that there should be equality of opportunity for all people, regardless of their gender, race, disability, sexual orientation, age or religion;
- (b) show respect and consideration for others;
- (c) not use bullying behaviour or harass any person; and
- (d) not do anything which compromises, or which is likely to compromise, the impartiality of those who work for, or on behalf of, your authority.

18.2.5 You must not:

- (a) disclose confidential information or information which should reasonably be regarded as being of a confidential nature, without the express consent of a person authorised to give such consent, or unless required by law to do so;
- (b) prevent any person from gaining access to information to which that person is entitled by law.

18.2.6 You must:

- (a) not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute;
- (b) report, whether through your authority's confidential reporting procedure or direct to the proper authority, any conduct by another Member or anyone who works for, or on behalf of, your authority which you reasonably believe involves or is likely to involve criminal behaviour (which for the purposes of this paragraph does not include offences or behaviour capable of punishment by way of a fixed penalty);
- (c) **report to your authority's Monitoring Officer any conduct by another Member which you reasonably believe breaches this Code of Conduct;**
- (d) not make vexatious, malicious or frivolous complaints against other Members or anyone who works for, or on behalf of, your authority.

18.2.7 You must comply with any request of your authority's Monitoring Officer, or the Public Services Ombudsman for Wales, in connection with an investigation conducted in accordance with their respective statutory powers.

18.2.8 You must not:

- (a) in your official capacity or otherwise, use or attempt to use your position improperly to confer on or secure for yourself, or any other person, an advantage or create or avoid for yourself, or any other person, a disadvantage;
- (b) use, or authorise others to use, the resources of your authority:
 - (i) imprudently;
 - (ii) in breach of your authority's requirements;
 - (iii) unlawfully;
 - (iv) other than in a manner which is calculated to facilitate, or to be conducive to, the discharge of the functions of the authority or of the office to which you have been elected or appointed;

- (v) improperly for political purposes; or
- (vi) improperly for private purposes.

18.2.9 You must:

- (a) when participating in meetings or reaching decisions regarding the business of your authority, do so on the basis of the merits of the circumstances involved and in the public interest having regard to any relevant advice provided by your authority's Officers, in particular by:
 - (i) the authority's Head of Paid Service;
 - (ii) the authority's Chief Finance Officer;
 - (iii) the authority's Monitoring Officer;
 - (iv) the authority's Chief Legal Officer (who should be consulted when there is any doubt as to the authority's power to act, as to whether the action proposed lies within the policy framework agreed by the authority or where the legal consequences of action or failure to act by the authority might have important repercussions);
- (b) give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

18.2.10 You must:

- (a) observe the law and your authority's rules governing the claiming of expenses and allowances in connection with your duties as a Member;
- (b) avoid accepting from anyone gifts, hospitality (other than official hospitality, such as a civic reception or a working lunch duly authorised by your authority), material benefits or services for yourself or any person which might place you, or reasonably appear to place you, under an improper obligation.

Part 3 - Interests

18.3 Interests

18.3.1 Personal Interests

- (a) You must in all matters consider whether you have a personal interest, and whether this Code of Conduct requires you to disclose that interest.

- (b) You must regard yourself as having a personal interest in any business of your authority if:
- (i) it relates to, or is likely to affect:
 - (A) any employment or business carried on by you;
 - (B) any person who employs or has appointed you, any firm in which you are a partner or any company for which you are a remunerated director;
 - (C) any person, other than your authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties as a Member;
 - (D) any corporate body which has a place of business or land in your authority's area, and in which you have 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) 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 body of the description specified in paragraph (D) above;
 - (F) any land in which you have a beneficial interest and which is in the area of your authority;
 - (G) any land where the landlord is your authority and the tenant is a firm in which you are a partner, a company of which you are a remunerated director, or a body of the description specified in paragraph (D) above;
 - (H) any body to which you have been elected, appointed or nominated by your authority;
 - (I) any:
 - 1 public authority or body exercising functions of a public nature;
 - 2 company, industrial and provident society, charity, or body directed to charitable purposes;
 - 3 body whose principal purposes include the influence of public opinion or policy;

- 4 trade union or professional association; or
- 5 private club, society or association operating within your authority's area,

in which you have membership or hold a position of general control or management;

- (J) any land in your authority's area in which you have a licence (alone or jointly with others) to occupy for twenty eight days or longer;
- (ii) a decision upon it might reasonably be regarded as affecting:
- (A) your wellbeing or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;
 - (B) any employment or business carried on by persons as described in (A);
 - (C) any person who employs or has appointed such persons described in (A), any firm in which they are a partner, or any company of which they are directors;
 - (D) any corporate body in which persons as described in (A) have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (E) any body listed in paragraphs 18.3.1(H) (1) to (5) in which persons described in (A) hold a position of general control or management,

to a greater extent than the majority of:

- 1 in the case of an authority with electoral divisions or wards, other Council taxpayers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or
- 2 in all other cases, other Council taxpayers, ratepayers or inhabitants of the authority's area.

18.3.2 Disclosure of Personal Interests

- (a) Where you have a personal interest in any business of your authority and you attend a meeting at which that business is considered, you must disclose orally to that meeting the existence and nature of that interest before or at the commencement of that consideration, or when the interest becomes apparent.

- (b) Where you have a personal interest in any business of your authority and you make:
- (i) written representations (whether by letter, facsimile or some other form of electronic communication) to a Member or Officer of your authority regarding that business, you should include details of that interest in the written communication; or
 - (ii) oral representations (whether in person or some form of electronic communication) to a Member or Officer of your authority you should disclose the interest at the commencement of such representations, or when it becomes apparent to you that you have such an interest, and confirm the representation and interest in writing within fourteen days of the representation.
- (c) Subject to paragraph 18.3.5(ii) below, where you have a personal interest in any business of your authority and you have made a decision in exercising a function of an executive or board, you must in relation to that business ensure that any written statement of that decision records the existence and nature of your interest.
- (d) You must, in respect of a personal interest not previously disclosed, before or immediately after the close of a meeting where the disclosure is made pursuant to paragraph 18.3.2(a), give written notification to your authority in accordance with any requirements identified by your authority's Monitoring Officer, **or in relation to a community council, your authority's Proper Officer**, from time to time but, as a minimum containing:
- (i) details of the personal interest;
 - (ii) details of the business to which the personal interest relates; and
 - (iii) your signature.
- (e) Where you have agreement from your Monitoring Officer that the information relating to your personal interest is sensitive information, pursuant to paragraph 18.4.2, your obligations under this paragraph 18.3.2 to disclose such information, whether orally or in writing, are to be replaced with an obligation to disclose the existence of a personal interest and to confirm that your Monitoring Officer has agreed that the nature of such personal interest is sensitive information.
- (f) For the purposes of paragraph 18.3.2(d), a personal interest will only be deemed to have been previously disclosed if written notification has been provided in accordance with this code since the last date on which you were elected, appointed or nominated as a Member of your authority.

- (g) For the purposes of paragraph 18.3.2(c), where no written notice is provided in accordance with that paragraph you will be deemed as not to have declared a personal interest in accordance with this code.

18.3.3 Prejudicial Interests

- (a) Subject to paragraph 18.3.3(b) below, where you have a personal interest in any business of your authority you also have a prejudicial interest in that business 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 your judgement of the public interest.

- (b) Subject to paragraph 18.3.3.3(c), you will not be regarded as having a prejudicial interest in any business where that business:

- (i) relates to:

- (A) another relevant authority of which you are also a Member;
- (B) another public authority or body exercising functions of a public nature in which you hold a position of general control or management;
- (C) a body to which you have been elected, appointed or nominated by your authority;
- (D) your role as a school governor (where not appointed or nominated by your authority) unless it relates particularly to the school of which you are a governor;
- (E) your role as a Member of a Local Health Board where you have not been appointed or nominated by your authority;

- (ii) relates to:

- (A) the housing functions of your authority where you hold a tenancy or lease with your authority, provided that you do not have arrears of rent with your authority of more than two months, and provided that those functions do not relate particularly to your tenancy or lease;
- (B) the functions of your authority in respect of school meals, transport and travelling expenses, where you are a guardian, parent, grandparent or have parental responsibility (as defined in section 3 of the Children Act 1989) of a child in fulltime education, unless it

relates particularly to the school which that child attends;

(C) the functions of your authority in respect of 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 from your authority;

(D) the functions of your authority in respect of an allowance or payment made in accordance with the provisions of Part 8 of the Local Government (Wales) Measure 2011, or an allowance or pension provided under Section 18 of the Local Government and Housing Act 1989.

(iii) your role as a community councillor in relation to a grant, loan or other form of financial assistance made by your community council to community or voluntary organisations up to a maximum of £500.

(c) The exemptions in paragraph 18.3.3(b) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration.

18.3.4 Overview and Scrutiny Committees

You also have a prejudicial interest in any business before a Scrutiny Committee where:

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's Executive, board 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, board, committee, sub-committee, joint-committee or joint sub-committee mentioned in paragraph 18.3.4(a) and you were present when that decision was made or action was taken.

18.3.5 Participation in Relation to Disclosed Interests

(a) Subject to paragraphs 18.3.5(b) **(bA)**, (c) and (d), where you have a prejudicial interest in any business of your authority you must, unless you have obtained a dispensation from your authority's Standards Committee:

(i) withdraw from the room, chamber or place where a meeting considering the business is being held:

- (A) where paragraph 18.3.5(b) applies, immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration; or
 - (B) in any other case, whenever it becomes apparent that that business is being considered at that meeting;
 - (ii) not exercise executive or board functions in relation to that business;
 - (iii) not seek to influence a decision about that business;
 - (iv) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and
 - (v) not make any oral representations (whether in person or some form of electronic communication) in respect of that business or immediately cease to make such oral representations when the prejudicial interest becomes apparent.
- (b) Where you have a prejudicial interest in any business of your authority you may attend a meeting 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.
- (bA) Where you have a prejudicial interest in any business of your authority you may submit written representations to a meeting relating to that business, provided that the public are allowed to attend the meeting for the purpose of making representations, answering questions or giving evidence relating to the business, whether under a statutory right or otherwise.**
- (bB) When submitting written representations under sub-paragraph (bA) you must comply with a procedure that your authority may adopt for the submission of such representations.**
- (c) Paragraph 18.3.5(a) does not prevent you attending and participating in a meeting if:
- (i) you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers; or

- (ii) you have the benefit of a dispensation provided that you:
 - (A) state at the meeting that you are relying on the dispensation; and
 - (B) before or immediately after the close of the meeting give written notification to your authority containing:
 - 1 details of the prejudicial interest;
 - 2 details of the business to which the prejudicial interest relates;
 - 3 details of, and the date on which, the dispensation was granted; and
 - 4 your signature.
- (d) Where you have a prejudicial interest and are making written or oral representations to your authority in reliance upon a dispensation, you must provide details of the dispensation within any such written or oral representation and, in the latter case, provide written notification to your authority within fourteen days of making the representation.

Part 4 – The Register of Members’ Interests

18.4 Registration of Personal Interests

18.4.1(a) Subject to sub-paragraph 18.4.1(d), you must, within 28 days of
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(i) your authority’s code of conduct being adopted or the mandatory provisions of this model code being applied to your authority; or

(ii) your election or appointment to office (if that is later),

register your personal interests, where they fall within a category mentioned in paragraph 18.3.1(b)(i), in your authority’s register of members’ interests by providing written notification to your authority’s monitoring officer.

(b) Subject to sub-paragraph 18.4.1(d), you must, within 28 days of becoming aware of any new personal interest falling within a category mentioned in paragraph 18.3.1(b)(i), register that new personal interest in your authority’s register of members’ interests by providing written notification to your authority’s monitoring officer.

- (c) Subject to sub-paragraph 18.4.1(d), you must, within 28 days of becoming aware of any change to a registered personal interest falling within a category mentioned in paragraph 18.3.1(b)(i), register that change in your authority's register of members' interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.**
- (d) Sub-paragraphs 18.4.1(a),(b) and (c) do not apply to sensitive information determined in accordance with paragraph 18.4.2(a).**
- (e) Sub-paragraphs 18.4.1(a) and (b) do not apply if you are a member of a relevant authority which is a community council when you act in your capacity as a member of such an authority.**
- (f) You must, when disclosing a personal interest in accordance with paragraph 18.3.2 for the first time, register that personal interest in your authority's register of members' interests by providing written notification to your authority's monitoring officer, or in the case of a community council to your authority's proper officer.**

18.4.2 Sensitive information

- (a) 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 the interest under paragraph 18.4.1.
- (b) You must, within twenty eight days of becoming aware of any change of circumstances which means that information excluded under sub-paragraph 18.4.2(a) is no longer sensitive information, notify your authority's Monitoring Officer, or in relation to a community council, your authority's Proper Officer asking that the information be included in your authority's register of Members' interests.
- (c) In this Code, "sensitive information" ("gwybodaeth sensitif") 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.

18.4.3 Registration of Gifts and Hospitality

You must, within twenty eight days of receiving any gift, hospitality, material benefit or advantage above a value specified in a resolution of your authority, provide written notification to your authority's Monitoring Officer, or in relation to a community council, to your authority's Proper Officer of the existence and nature of that gift, hospitality, material benefit or advantage.