

# WEST DUNBARTONSHIRE COUNCIL

## Report by the Executive Director of Corporate Services

Council : 27 January 2010

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**Subject:** Consultation – Proposed Amendments to be made to the Councillor’s Code of Conduct

### 1. Purpose

- 1.1 To obtain the views of Council on the terms of a response to the Scottish Government Consultation on review of the Councillor’s Code of Conduct.

### 2. Background

- 2.1 The Councillor’s Code of Conduct was approved by the Scottish Parliament in December 2001 and brought into effect on 1 May 2003. The code has since been supplemented by statutory guidance. A review group has undertaken a limited review of the code to address two key areas:-

- The implications for the code of the legislative reform of the planning system which came into effect in 2009 and;
- To review those areas of the code which benefit from clarification or reconsideration, drawing on experience gained in its application.

The amendments to the code are largely of a technical nature intended to bring it up to date and to clarify the code and to make it more readily understood. Areas of the code’s statutory guidance have also been incorporated within the body of the code where it was considered this would be of benefit.

- 2.2 A copy of the revised code is attached in appendix 1. Revisals to the code are highlighted in bold.
- 2.3 The Scottish Government are now consulting on the terms of the revised code and the last date for consultation responses is 18 February 2010.

### 3. Main Issues

- 3.1 This is a limited review of the code and most of the highlighted revisals shown in appendix 1 reflect the present position, either in terms of the guidance issued by the Standards Commission or decisions. The main substantive changes which have been made to the code are:-

- 3.1.1 In section 2.1 it is stated that the general principles on which the Code of Conduct is based should be used for guidance and interpretation only. This accords with the present stance taken by the Standards Commission in its decisions, where it takes the view that it is difficult for the general principles to substantiate a breach of the code, without breaches of particular sections.
- 3.1.2 In paragraph 3.2 provision is made that at meetings Councillors must respect the Chair, your colleagues, council employees and any members of the public present during meetings or surgery's where you are performing duties as a Councillor. When a meeting has a Chairperson you must comply with rulings from the Chair. This reflects the position taken in previous Standards Commission decisions.
- 3.1.3 Gifts and Hospitality – Paragraph 3.7 provides that gifts or hospitality should not give rise to any real or substantive personal gain. Paragraph 3.9 and 4.22 provides that isolated gifts of a trivial nature, the value of which must not exceed £50 do not need to be refused or registered.
- 3.1.4 Use of Council facilities – this now provides that such facilities can be used for incidental personal use as authorised by your Council and not in any way related to party political or campaigning activities. In some Councils' employees are allowed to use their work computers out of office hours to access the web for personal use. The present wording of the Code of Conduct would not allow Councillors to make even incidental use of Council facilities and the change allows their use to be on a par with that of employees.
- 3.1.5 Paragraph 4.4 provides that there is no need to register an interest simply because you are a Councillor or a member of a joint board, a joint committee or of COSLA.
- 3.1.6 The financial and non financial interests of other persons. This states that you must declare any financial or non financial interests of certain persons such as spouses or relatives. However it now also provides that you must declare any financial or non financial interests of a) an employer or a partner in a firm; b) a body (or subsidiary or parent of a body) of which you are a remunerated member or director; c) a person with whom you have received a registerable gift or registerable hospitality and e) a person from whom you have received registerable election expenses.
- 3.1.7 The general and specific exclusions which allow members to attend meetings and vote in circumstances where they otherwise would not have been able to do so were previously detailed in the guidance. These have now been incorporated into paragraph 5.18 of the code.
- 3.1.8 Quasi judicial or regulatory applications. Paragraph 7.1 makes it clear that this section of the code also applies to quasi judicial or regulatory matters other than planning. This includes licensing.

3.1.9 Planning changes – paragraph 7.13 to 7.25 contain changes deriving from the new planning legislation. As members will be aware the new legislation provides that certain applications are dealt with by the full Council, albeit after consideration by the Planning Committee. Appeals against decisions taken by Officers under delegated authority are now to be dealt with by a local review body of Councillors, rather than the Scottish Government.

3.2 A suggested response is contained in appendix 2. Council is invited to comment on this and to amend as appropriate

3.3 As many of the amendments are technical in nature, it is inevitably the case that many of the comments will be technical in nature. It is understood that one of the main aims of the changes was to introduce greater certainty into the code. However it is felt that in certain areas the revisions have achieved the opposite. Such issues are addressed in appendix 2.

#### **4. Personnel Issues**

4.1 There are no personnel issues.

#### **5. Financial Implications**

5.1 There are no financial issues.

#### **6. Risk Analysis**

6.1 It is important that there is certainty as to the terms of the code, both to encourage good standards and to provide clear guidance to Members on behaviour which fails to meet these standards. Insofar as the revisions achieve such certainty, they are welcomed.

#### **7. Conclusions and Officers Recommendations**

7.1 The fact that this is not a root and branch review of the code is welcome. The present code generally works well and both members and officers are familiar with it. The fact that the changes are intended to produce greater certainty is also welcomed, albeit it is felt that this has not always been achieved.

7.2 Recommendation is that Council considers the changes to the Code of the Conduct and decides whether its response should be in terms of appendix 2, or otherwise.

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**Appendices:** Appendix 2 – Response by West Dunbartonshire Council to the Consultation on the Councillor’s Code of Conduct

**Background Papers:** None

**Wards Affected:** All

## APPENDIX 2

### Response by West Dunbartonshire Council to the Consultation on the Councillor's Code of Conduct

Thank you for your letter of 19 November 2009 inviting views on a proposal for amendments to be made to the Councillor's Code of Conduct. On behalf of West Dunbartonshire Council I would make the following comments.

The comments are listed under the questions detailed in appendix A to the Consultation.

#### General Questions

1. Have you used the code before?

Yes.

2. If yes, in what capacity have you/do you use the code?

*As Councillors and as officers giving advice and training to Councillors, Council and Council committees and in responding to queries raised by Councillors, members of the public etc.*

3. How often do you use the code?

*Very often.*

4. Do you agree that the revised code achieves the aim of being clearer and more easily understood?

*In some areas the revised code achieves these aims but in other areas it is felt that it introduces a lack of certainty. Particular comments are made under the relevant sections of the code.*

#### Questions on the Revised Code

##### Section 2 – Key Principles of the Code of Conduct

5. Do you agree that the key principles should be used for guidance and interpretation purposes only?

*Yes – while the key principles provide the underlying basis for the rules in the code, some of these key principles are drafted in broad terms. It is important that the code is clear and that both Councillors and members of the public are clear as to exactly what members can or cannot do without sanction. Accordingly it is accepted that the general principles insofar as they underlie the detailed provisions of the code, should primarily be used for the purpose of guidance and interpretation.*

### **Section 3 – General Conduct**

6. Do you agree that the information in the code relating to conduct at meetings is clear and easily understood?

Yes.

7. Do you agree that the information in the code relating to gifts and hospitality is clear and easily understood?

*Paragraph 3.7 indicates that Councillors should not accept any gift of hospitality which could give rise to a real or substantive personal gain and 3.9 provides that as a general guide it is usually appropriate to refuse offers except isolated gifts of a trivial nature the value of which must not exceed £50. It would be better if the wording of 3.7 and 3.9 was similar as it appears that two different tests apply.*

8. Do you agree that the information in the code relating to the use of Council facilities is clear and easily understood?

Yes – *this is a welcome change reflecting the use of modern technology.*

### **Section 4 – Registration of Interests**

9. Do you agree that the information in this section of the code is clear and easily understood?

*The amendments in paragraphs 4.4 and 4.21 are a little confusing. This appears to provide that membership of a joint board, joint committee or COSLA does not need to be declared under the remuneration section of the register but should be registered under non financial interests. It would be better if this was made clearer. Paragraph 4.21 also refers to non financial interests as including appointments to Committees. The reference to Committees implies Council committees, which was apparently not intended. This could perhaps be reworded as “which could include appointments to, or memberships of other organisations”.*

### **Section 5 – Declaration of Interests**

10. Do you agree that the information in this section of the code is clear and easily understood?

*Insofar as many of the revisals to this section are as a result of the incorporation of the Guidance on general and specific exclusion into the code, the section generally remains clear. The one section that is slightly unclear is in 5.10 (v) and 5.12 (v) where a Councillor needs to declare the financial or non financial interests of a person from whom he or she has received a registerable gift or registerable hospitality. This may well have unintended*

consequences. For example, members who receive gifts on a twinning visit would then have to declare an interest in relation to decisions on twinning with that authority. Would it be necessary to declare an interest in all time when the hospitality or gift had been many years before. While in principle there is no problem with the provision, in practice it may prove difficult and it is suggested that further thought is given to this area.

In the definition of exclusions it would be helpful if it was made clear that the exclusions applied both to financial and non financial interests. At present paragraph 95 of the guidance makes this clear, but this has been omitted in paragraph 5.18.

## **Section 6 – Lobbying and Access to Councillors**

11. Do you agree that the information in this section of the code is clear and easily understood?

*No – the amendment to paragraph 6.3 appears to contradict much of section 7. It also appears to be incorrect in law. If members are lobbied on regulatory matters they should have the following options:-*

1. *Advise the person lobbying that they are a member of the committee which will subsequently determine the application and as they cannot prejudge the application they do not wish to be lobbied. They would direct lobbying to the appropriate department of the Council (as per paragraph 6.3) or ;*
2. *The member could listen to the views of the lobbyist but express no opinion whatsoever on it. Whether or not a Councillor agreed to hear the lobbyist will perhaps depend on the circumstances of the lobbying. For example a member may agree to attend a public meeting of members of the public who would normally approach their local Councillor on such matters. However a Councillor may not agree to meet professional planning consultants who may be seeking to undermine an Officer's preliminary views.*
3. *The Councillor can agree to receive such lobbying and lend support for or against any such application. In those circumstances he requires to declare an interest and take no further part in the determination, nor should be lobby other members.*

*Paragraph 6.3 does now allow for the second and third alternatives and should do so.*

## **Section 7 – Taking decisions on Quasi Judicial or Regulatory Applications**

12. Do you agree that the information in this section of the code is clear and easily understood?

*No – this section has become more confusing as a result of the changes. Section 7.1 has incorporated the provision from the Guidance that this section of the code also applies to other quasi judicial and regulatory matter such as licensing. This is welcome. However it should also provide that it applies to employee appeals since a recent Standards Commission case in Midlothian Council made it clear that this is the case.*

*It appears that paragraphs 7.1 to 7.5 apply to all quasi judicial and regulatory applications whereas paragraphs 7.6 to 7.25 only apply to planning matters. However paragraphs 7.6, 7.7, 7.8, 7.10, 7.11, 7.12, 7.13, 7.14, 7.15, 7.21, 7.22, 7.23, 7.24 and 7.25 are equally applicable to other regulatory regimes. For example, the manner in which Councillors deal with matters of strategy and policy as part of the local plan process is not dissimilar to the Licensing Boards preparation of the licensing policy statement. There is a need for clarity as to what provisions of section 7 apply to what regulatory regimes.*

13. Do you agree that this section effectively addresses the legislative changes that have been made to the Scottish Planning System during 2009?

*In general this effectively addresses the changes although particular comments are as follows:-*

*In section 7.8 it is suggested that Councillors can give an in-principle view on whether an authority might be minded to consider granting planning permission. It would be better if this section was deleted. While it is common for officers to have pre-application discussions with developers which often result in changes to layout, density, design etc, it is extremely uncommon for Councillors to be involved in these. As presently worded this section provides an open invite to developers and their agents to contact members directly where they have been unable to persuade planning officers of their arguments.*

*The position of Councillors who do not sit on the regulatory or quasi judicial committee in question is not adequately covered in section 7. For example, 7.25 provides that on issues of unauthorised development the member should refer the matter to the relevant officer and advise constituents thereafter to deal with that officer. However if the Councillor is not on that committee and will have no influence in any subsequent determination, he or she should still be able to discuss or pursue the case with his constituent.*