

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2016 - 2017

COUNCIL

25TH MAY 2016

**REPORT OF:
DIRECTOR OF LEGAL &
DEMOCRATIC SERVICES**

Agenda Item No. 16
REVISED MEMBERS' CODE OF CONDUCT

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1. PURPOSE OF REPORT

- 1.1 To enable Council to adopt a revised Members' Code of Conduct from 26th May 2016.

2. RECOMMENDATIONS

It is recommended that: -

- 2.1 Council notes the recent changes to the 'Local Authorities Model Code of Conduct' for local government members as highlighted in the report; and
- 2.2 As a consequence of the changes to the Model Code of Conduct a revised Members' Code of Conduct as annexed at Appendix 1 to the report be adopted by this Council, reflecting those changes, with effect from 26th May 2016.

3. BACKGROUND

- 3.1 On the 26th March 2008 Council adopted its current Member's Code of Conduct with effect from 2nd May 2008.
- 3.2 Regulations made by Welsh Government have recently amended the Model Code of Conduct for local government members. The Model Code of Conduct contains mandatory provisions which must be adopted in relation to members and co-opted members of this Council with regards to its own Members' Code of Conduct.
- 3.3 As a result of these amendments the relevant legislation requires this Council to adopt a code of conduct in place of its existing code of conduct or revise its existing code of conduct by 26th July 2016.

4. REVISIONS TO MODEL CODE OF CONDUCT

- 4.1 The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 (“the Order”) amends the Model Code of Conduct, as set out in the Schedule to the Local Authorities (Model Code of Conduct) (Wales) Order 2008. The purpose of the Order is to modify the Model Code of Conduct as identified below.

Obligation to Report Potential Breaches

- 4.2 The Order omits reference to the Public Services Ombudsman for Wales from paragraph 6(1)(c) of the Model Code. Consequently, a member who is aware of a potential breach of their authority’s code of conduct will be required only to report the matter to the authority’s monitoring officer (this does not prevent a member from referring a matter to the Ombudsman where that may be appropriate). This will enable the monitoring officer to consider and advise on whether the matter is appropriate for consideration under the authority’s local complaints resolution protocol, or should be referred to the Ombudsman for consideration. The monitoring officer would be under no obligation to refer the matter directly, but could advise the member making the complaint that this is the appropriate course of action.

Registers of Members’ Interests

- 4.3 The Order allows for the transfer of responsibility for maintaining the register of interests of members of community councils from the monitoring officer of the county/county borough council for the area to the ‘proper officer’ of each community council.
- 4.4 The Order also substitutes a new paragraph 15 of the Model Code. This makes it clear that, in addition to those personal interests of a type specified within paragraph 10(2)(a) which must be registered within 28 days of a member taking up office or their becoming aware of a new or changed interest, any personal interest disclosed for the first time under paragraph 11 of the Code must also be entered in the register of interests. This does not remove the exemption for community councillors from the requirement to register certain financial and other interests within 28 days of taking up office. This is not a change of policy, but addresses a perceived ambiguity in the wording of the Code.

Constituency Interests

- 4.5 The Order omits paragraph 10(2)(b) from the Model Code. This clarifies that a member is not precluded from participating in the business of the authority simply because it relates to a constituency matter. However, a member taking a decision on a matter is required to keep an open mind until they are in full possession of all relevant facts and to act objectively and in the public interest in accordance with paragraph 8 of the Model Code.

Other Provisions

- 4.6 Paragraph 14(2) of the Model Code provides that a member with a prejudicial interest in any business of their authority may attend a meeting for the purpose of making representations, answering questions or giving evidence relating to that business, provided the public are also allowed to attend the meeting for the same purpose. The Order inserts new paragraphs 14(2A) and (2B) which enables a Member, in the same circumstances, to instead submit written representations, in compliance with any procedure which may be adopted by their authority for that purpose.
- 4.7 The Order also makes minor technical amendments to reflect changes in other legislation since the Model Code was made in 2008, e.g. the abolition of police authorities and amend references to sections of the Local Government Act 1972 and Local Government Act 2000 (dealing with allowances and payments) and replace with the current statutory reference in the Local Government (Wales) Measure 2011.

5. ADOPTION OF A REVISED MEMBERS' CODE OF CONDUCT

- 5.1 In view of the amendments made to the Model Code of Conduct, as outlined in paragraph 4 above, it is recommended that the revised Members' Code of Conduct, as appended at Appendix 1 to the report, be adopted by this Council with effect from 26th May 2016.
- 5.2 A report regarding the proposed revisions to the Members' Code of Conduct was considered by the Council's Standards Committee at its meeting on 28th April 2016. The Committee recommended to full Council the adoption of the revised Members' Code of Conduct as appended at Appendix 1.
- 5.3 Members are asked to note that as soon as practicable after adopting or revising a code of conduct the Council must ensure copies are available for inspection by members of the public at an office of the Council and that it must publish in one or more newspapers circulating in its area a notice which says it has adopted or revised its Members' Code of Conduct. The Council must also send a copy to the Public Services Ombudsman for Wales.
- 5.4 The Monitoring Officer has already had preliminary discussions with Community and Town Council clerks to ensure that the revisions to the Model Code of Conduct are brought to the attention of all Community and Town Councils within the County Borough however it should be noted that it is for each individual council to resolve to adopt its own revised Code.

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MEMBERS' CODE OF CONDUCT adopted by the Council on 2nd May 2008

Revised – 26th May 2016

PART 1 INTERPRETATION

1.—

(1) In this code—

“co-opted member” (*“aelod cyfetholedig”*), 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” (*“cyfarfod ”*) 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, and includes circumstances in which a member of an executive or board or an officer acting alone exercises a function of an authority;

“member” (*“aelod ”*) includes, unless the context requires otherwise, a co-opted member;

“register of members’ interests” (*“cofrestr o fuddiannau’r aelodau ”*) means the register established and maintained under section 81 of the Local Government Act 2000;

“registered society” means a society, other than a society registered as a credit union, which is—

(a) a registered society within the meaning given by section 1(1) of the Co-operative and Community Benefit Societies Act 2014; or

(b) a society registered or deemed to be registered under the Industrial and Provident Societies Act (Northern Ireland) 1969;

“relevant authority” (*“awdurdod perthnaso ”*) 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 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;

“you” (“*chi*”) means you as a member or co-opted member of a relevant authority; and

“your authority” (“*eich awdurdod*”) means the relevant authority of which you are a member or co-opted member.

(2) In relation to a community council—

(a) “*proper officer*” (“*swyddog priodol*”) means an officer of that council within the meaning of section 270(3) of the Local Government Act 1972; and

(b) “*standards committee*” (“*pwylgor safonau*”) 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

2.—

(1) Save where paragraph 3(a) 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 6(1)(a) and 7.

(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.

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.

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.

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.

6.—

(1) 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.

(2) 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.

7. —

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.

8. —

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.

9. —

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

Personal Interests

10.—

(1) You must in all matters consider whether you have a personal interest, and whether this code of conduct requires you to disclose that interest.

(2) You must regard yourself as having a personal interest in any business of your authority if—

(a) it relates to, or is likely to affect—

(i) any employment or business carried on by you;

(ii) 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;

(iii) 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;

(iv) 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;

(v) 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 sub-paragraph (iv) above;

(vi) any land in which you have a beneficial interest and which is in the area of your authority;

(vii) 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 subparagraph (iv) above;

(viii) any body to which you have been elected, appointed or nominated by your authority;

(ix) any—

(aa) public authority or body exercising functions of a public nature;

(bb) company, registered society, charity, or body directed to charitable purposes;

(cc) body whose principal purposes include the influence of public opinion or policy;

(dd) trade union or professional association; or

(ee) 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;

(x) any land in your authority's area in which you have a licence (alone or jointly with others) to occupy for 28 days or longer;

(c) a decision upon it might reasonably be regarded as affecting—

(i) your well-being or financial position, or that of a person with whom you live, or any person with whom you have a close personal association;

(ii) any employment or business carried on by persons as described in 10(2)(c)(i);

(iii) any person who employs or has appointed such persons described in 10(2)(c)(i), any firm in which they are a partner, or any company of which they are directors;

(iv) any corporate body in which persons as described in 10(2)(c)(i) have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or

(v) any body listed in paragraphs 10(2)(a)(ix)(aa) to (ee) in which persons described in 10(2)(c)(i) hold a position of general control or management,

to a greater extent than the majority of—

(aa) in the case of an authority with electoral divisions or wards, other council tax payers, rate payers or inhabitants of the electoral division or ward, as the case may be, affected by the decision; or

(bb) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

Disclosure of Personal Interests

11.—

(1) 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.

(2) Where you have a personal interest in any business of your authority and you make—

(a) 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

(b) 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 14 days of the representation.

(3) Subject to paragraph 14(1)(b) 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.

(4) 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 sub-paragraph 11(1) , 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—

(a) details of the personal interest;

(b) details of the business to which the personal interest relates; and

(c) your signature.

(5) Where you have agreement from your monitoring officer that the information relating to your personal interest is sensitive information, pursuant to paragraph 16(1), your obligations under this paragraph 11 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.

(6) For the purposes of sub-paragraph (4), 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.

(7) For the purposes of sub-paragraph (3), 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.

Prejudicial Interests

12.—

(1) Subject to sub-paragraph (2) 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.

(2) Subject to sub-paragraph (3), you will not be regarded as having a prejudicial interest in any business where that business—

(a) relates to—

- (i) another relevant authority of which you are also a member;
- (ii) another public authority or body exercising functions of a public nature in which you hold a position of general control or management;
- (iii) a body to which you have been elected, appointed or nominated by your authority;
- (iv) 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;
- (v) your role as a member of a Local Health Board where you have not been appointed or nominated by your authority;

(b) relates to—

- (i) 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;
- (ii) 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 full time education, unless it relates particularly to the school which that child attends;

(iii) 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;

(iv) 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;

(c) 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.

(3) The exemptions in subparagraph (2)(a) do not apply where the business relates to the determination of any approval, consent, licence, permission or registration.

Overview and Scrutiny Committees

13. —

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

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive, 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 sub-paragraph (a) and you were present when that decision was made or action was taken.

Participation in Relation to Disclosed Interests

14.—

(1) Subject to sub-paragraphs (2), (2A), (3) and (4), 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—

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

(i) where sub-paragraph (2) 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

(ii) in any other case, whenever it becomes apparent that that business is being considered at that meeting;

(b) not exercise executive or board functions in relation to that business;

(c) not seek to influence a decision about that business;

(d) not make any written representations (whether by letter, facsimile or some other form of electronic communication) in relation to that business; and

(e) 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.

(2) 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.

(2A) 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.

(2B) When submitting written representations under sub-paragraph (2A) you must comply with any procedure that the authority may adopt for the submission of such representations.

(3) Sub-paragraph (1) does not prevent you attending and participating in a meeting if—

(a) you are required to attend a meeting of an overview or scrutiny committee, by such committee exercising its statutory powers; or

(b) you have the benefit of a dispensation provided that you—

(i) state at the meeting that you are relying on the dispensation; and

(ii) before or immediately after the close of the meeting give written notification to your authority containing—

(aa) details of the prejudicial interest;

- (bb) details of the business to which the prejudicial interest relates;
 - (cc) details of, and the date on which, the dispensation was granted; and
 - (dd) your signature.
- (4) 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 14 days of making the representation.

PART 4 THE REGISTER OF MEMBERS' INTERESTS

Registration of Financial and Other Interests and Memberships and Management Positions

Registration of Personal Interests

15.—

- (1) Subject to sub-paragraph (4), you must, within 28 days of—
- (a) your authority's code of conduct being adopted or the mandatory provisions of this model code being applied to your authority; or
 - (b) your election or appointment to office (if that is later),

register your personal interests, where they fall within a category mentioned in paragraph 10(2)(a), in your authority's register of members' interests by providing written notification to your authority's monitoring officer.

(2) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any new personal interest falling within a category mentioned in paragraph 10(2)(a), register that new personal interest in your authority's register of members' interests by providing written notification to your authority's monitoring officer.

(3) Subject to sub-paragraph (4), you must, within 28 days of becoming aware of any change to a registered personal interest falling within a category mentioned in paragraph 10(2)(a), 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.

(4) Sub-paragraphs (1), (2) and (3) do not apply to sensitive information determined in accordance with paragraph 16(1).

(5) Sub-paragraphs (1) and (2) do not apply if you are a member of a relevant authority which is community council when you act in your capacity as a member of such an authority.

(6) You must, when disclosing a personal interest in accordance with paragraph 11 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.

Sensitive information

16.—

(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority's monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to the interest under paragraph 15.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under sub-paragraph (1) 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.

(3) 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.

Registration of Gifts and Hospitality

17. —

You must, within 28 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.

LOCAL GOVERNMENT ACT 1972
AS AMENDED BY
THE LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL
COUNCIL
25th MAY 2016

REPORT OF DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

REPORT OF: DIRECTOR OF LEGAL & DEMOCRATIC SERVICES	REVISED MEMBERS' CODE OF CONDUCT
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Author: - Andy Wilkins – Head of Legal, Corporate & Democratic Services (01443 424189)

Background Papers

Local Government Act 2000

The Local Authorities (Model Code of Conduct) (Wales) Order 2008

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

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