**Report No.** **01/11**

**Standards Committee**

**REPORT OF THE MONITORING OFFICER**

**SUBJECT: CODE OF CONDUCT**

Members will be aware that this Authority adopted the Code of Conduct as contained in The Local Authorities (Model Code of Conduct) (Wales) Order 2008 at its meeting on 25th June 2008. A particular area that has caused concern relates to the interpretation of Paragraph 10(2)(b) of the Code. For ease of reference I set this out below and highlight the relevant section.

***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 sub-paragraph (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, industrial and provident 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;*

*(b) 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; or*

*(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.*

In April 2010 the Public Service Ombudsman for Wales (PSOW) published guidance on the Code of Conduct. This document called “The Code of Conduct for Members of Local Authorities in Wales – Guidance from the Public Services Ombudsman for Wales“ applies to Members of National Park Authorities.

The Association of County Secretaries and Solicitors of which I am a member has had correspondence with Welsh Government over the interpretation by the PSOW of Paragraph 10(2)(b) in particular. The PSOW has now issued supplementary guidance which I set out below.

***Guidance on Paragraph 10(2)(b)***

*When I issued the guidance on the Code of Conduct in April 2010 in it I referred to the fact that paragraph 10(2)(b) had given rise to great interpretive difficulties. The crux of the problem was that a strict interpretation of the paragraph, as worded, could well preclude members from participating in any decision affecting their ward – whereas it has been suggested that the underlying policy intention had been to limit the scope of this provision to decisions made by individual councillors in the exercise of executive functions. At the time a case involving an alleged breach of the paragraph was due to be considered by a tribunal set up by the Adjudication Panel for Wales. I expected that the decision would be of assistance in establishing the appropriate interpretation. Therefore I decided to issue supplementary guidance on the matter once the tribunal’s decision was available.*

*The decision has now been issued but it has not been of direct assistance on this point. Having reflected on the matter further, I have decided to issue supplemental guidance setting out my proposed approach to complaints alleging a breach of this paragraph of the Code. I do not believe that it would be in the public interest, nor in the interests of local democracy, to adopt a literal interpretation as a matter of course. Therefore as a general rule in exercising my discretion the decision as to whether or not to investigate will be based on the assumption that the paragraph is actually directed at individual members making decisions in the exercise of executive functions or participating in quasi judicial decisions e.g. at planning or licensing committees.*

**Members are asked to NOTE this report.**

Background Documents

Report to National Park Authority 25th June 2008 adopting the Model Code of Conduct

Report to Standards Committee 16th June 2010 - Code of Conduct: Guidance for Members

*(For further information, please contact John Parsons on Ext. 4904)*