

STANDARDS COMMITTEE

9 June 2005

A Code for the Future – A Consultation Paper on the Review of the Code of Conduct for Members

Purpose

1. To consider the Council's response to the Consultation Paper issued by the Standards Board for England in respect of the Code of Conduct for Members.

Background

2. The Code of Conduct for Members was introduced in November 2001 and came into force across all authorities in May 2002. Wiltshire County Council's Code of Conduct for Members was adopted by the Council in February 2002 and took the form of the Model Code issued by the Secretary of State, following a long period of consultation between the Government, Local Government Association and local authorities. The Standards Committee contributed to this consultation.
3. At the request of the Minister for Local and Regional Government, the Standards Board for England is conducting a review of the Code of Conduct for Members and will make recommendations for changes to the Office of the Deputy Prime Minister.
4. The Standards Board has issued a full Consultation Paper and a shorter summary document containing the 29 key questions for review. Copies of both documents have been previously circulated to members of the Standards Committee and all members of the Council have been invited to comment on the issues raised.
5. The purpose of the consultation is:

“to review the effectiveness of the Code of Conduct and explore ways in which it could be simplified, clarified and improved. This review takes as its starting point the need for the Code to continue reflecting the principles of conduct expected of members and ensuring that the Code

and the Standards Board for England's guidance provide an appropriate and proportionate ethical framework for members in which high standards of conduct can be achieved. The aim of this exercise is not to address the role or operation of the Standards Board for England, review its referral thresholds or discuss whether particular matters merit investigation in individual cases."

6. The Association of Council Secretaries and Solicitors (ACSeS), is in the process of consulting its members on a draft response to the Consultation. A copy of its initial draft response, prepared by the Monitoring Officer of Birmingham City Council, is attached at Appendix 1. The Committee may wish to use this document as the basis for its own response, adding to or amending the content as the Committee sees fit.
7. The closing date for comments back to the Standards Board is 17 June 2005.

Financial Implications

8. There are no financial implications relating to this report.

Risk Assessment

9. There are no risks associated with the preparation of this report

Recommendation

10. To authorise the Monitoring Officer to respond to the Standards Board's Consultation Paper, along the lines set out in Appendix 1, taking into account any amendments or additional comments the Committee may wish to make, having regard to any comments received from other members of the Council.

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MONITORING OFFICER

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Unpublished documents relied upon in the preparation of this report: None
Environmental implications: None

ACSeS - DRAFT FOR CONSULTATION PURPOSES

- A Code for the Future -

SBE's Consultation on the review of the Code

The General Principles

Q1. Should the ten General Principles be incorporated as a preamble to the Code of Conduct?

A1 Yes, as a useful reminder. The ten General Principles should also be extended to any legal, voluntary or community organisation / public body dealing with or having any engagement or involvement with a local authority.

The General Principles should also be strengthened, as per recommendations of the Graham Committee's research findings re 'Honesty & Integrity', and to impose a legal requirement on such bodies to review on a periodic basis – say, three-yearly – their corporate and ethical framework governance arrangements so as to ensure compliance with best practice and Members / Officers remain in touch with best practice. If a public body finds this not to be the case, there should then be a positive obligation on the same to insist relevant Members / Officers attend compulsory training and development.

Q2 Are there any other principles which should be included in the Code of Conduct?

A2 The recent research by the Graham Committee concluded that the definition of "honesty" should be strengthened. Furthermore, see the details set out in A1.

Disrespect and freedom of speech

Q3 Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?

A3 In light of case law, I am sure it would be possible to define a broad test for disrespect which would then be clear to all, as opposed to simply relying upon a lawyer's awareness / interpretation of case law and the current 'thinking' of The Standard Board for England's practice in such matters.

Q4 Should the Code of Conduct include a specific provision on bullying? If so, is the ACAS definition of bullying quoted in the full consultation paper appropriate for this?

A4 Most good local authority Protocols on Member / Officer Relations already include provisions relating to bullying, harassment, victimisation etc by Members. Local Standards Committees will, therefore, be best placed to deal with local issues and to refer "appropriate / serious cases" (to be determined) against leading and other members to The Standards Board for England. The revised Code should, therefore, allow for such matters being "referred up" – in accordance with Graham Committee recommendations - to The Standards Board for England rather than for local authorities having to rely upon the current provisions covered by the Code which "indirectly" relate to bullying, harassment or victimisation.

Confidential Information

Q5 Should the Code of Conduct contain an explicit public interest defence for members who believe they have acted in the public interest by disclosing confidential information?

A5 Yes. Under the Freedom of Information Act 2000, it is difficult to see how local

authorities should be able to exercise the public interest test in releasing "confidential" information; but councillors would not be so permitted. Some correlation with/linked to the Freedom of Information requirements may, therefore, strengthen the Code of Conduct for Members and be of benefit in progressing this matter.

Q6 Do you think the Code of Conduct should cover only information which is in law "exempt" or "confidential", to make it clear that it would not be a breach to disclose any information that an authority had withheld unlawfully?

A6 Interpretation of information "withheld unlawfully" will be a difficult one to monitor/enforce, as some councillors, for personal or party political reasons, may, intentionally or inadvertently ignore the law / case judgements, with a view to gaining publicity/electoral advantage or to test the limits of the law and practice in such areas. Furthermore, it is wrong for a councillor to form the view that a local authority had acted "unlawfully" as it is a matter for the courts and not dependent on the opinion of "non-lawyers".

Disrepute and private conduct

Q7 Should the provision relating to disrepute be limited to activities undertaken in a member's official capacity or should it continue to apply to certain activities in a member's private life?

A7 Disrepute should be limited to official capacities; although it is clear that a member's conduct in private life "may" have a direct impact and effect on his official capacity. If the impact is, on balance, that a reasonable member (knowing all the relevant facts) should have known / been mindful of at the time of committing the private life action, s/he should be held to be accountable / responsible for the same and that should then be the trigger for bringing such matters, objectively, within the official capacity behaviour. This objective

'reasonable member' test will provide some safeguards and protection under the Code to allegations of any breaches under the Human Rights Act and/or European Convention on Human Rights and Fundamental Freedoms.

Q8 If the latter, should it continue to be a broad provision or would you restrict it solely to criminal convictions and situations where criminal conduct has been acknowledged?

A8 The objective 'reasonable member' test, set out in A7, should suffice as the matter under consideration may extend beyond criminal activities or actual convictions – which, of course, may take years to conclude. Allegations against members of criminal activity, of course, have no merit unless and until determined by the Courts.

Misuse of Resources

Q9 We believe that the Code should prohibit breaches of the publicity code, breaches of any local protocols, and misuse of resources for inappropriate political purposes. Do you agree?

A9 Yes. This could also be tied to the bullying, harassment or victimisation provisions mentioned in A4; although it would, of course, have to be recognise that this 'automatic incorporation' of local Protocols into the National Code of Conduct for Members may give rise to different / various standards and consistency (or perceived consistency of SBE/APE decisions) may, therefore, become a real issue at the national level.

The current Code should also be strengthened to deal with misuse of power (which goes beyond use/misuse of Council resources or position as a member) as, under the executive arrangements, individual Councillors have the prime opportunity to "use" their executive powers for ulterior or party political purposes. 'Things' could, therefore, be easily 'engineered or developed so as to appear'

damaging for opposition members under the guise of 'legitimate' Council business.

Q10 If so, how could we define "inappropriate political purposes"?

A10 This can be defined by the negative – i.e. anything that does not serve or further the best interest of the local authority and the citizens of the area - which is clearly all embarrassing and would extend beyond political activities. The benefit of such an approach would help to reinforce the primary purpose of a Member – to serve or further the best interests of the locality and not themselves, their friends or political parties. This would then provide "prima facie" evidence which would have to be rebutted by the relevant member that s/he did not use his/her power for "ulterior or inappropriate purposes".

Q11 Is the Code of Conduct right not to distinguish between physical and electronic resources?

A11 No. All resources, no matter how created or stored should be covered. Furthermore, as indicated in A9, resources should cover "power" exercised by members and not just resources/position, as it places an executive member in great power to instruct (or resist) officers from carrying out their lawful duties or requiring them to do things "differently" which may not be in the best interests of the local authority and / or the citizens of any area.

This "danger zone" is particularly noticeable in 'new' administrations which may have been out of power for a number of years and, as such, may not be fully cognisant of the "acceptable norms" of dealing with power under the new executive arrangements.

Duty to report breaches

Q12 Should the provision of the Code of Conduct that requires members to report breaches of the Code by fellow members be retained in full, removed

altogether, or somehow narrowed?

A12 This has been a partially onerous provision for elected members and should be removed as there are already sufficient legislative provisions re whistle-blowing. Members should, therefore, be in the same position as ordinary members of the public - or others who are subject to professional Codes of Conduct - who are not legally required to report matters to the relevant authorities.

Alternatively, the provisions could be amended for any complaint to be first reported to the Chairman of the local Standards Committee and/or the Monitoring Officer and/or the person against whom the 'allegation' might be made, so as to allow for some form of 'filtering' or a relatively 'reasonable explanation' route.

Q13 If you believe the provision should be narrowed, how would you define it? For example, should it apply only to misconduct in a member's public capacity, or only to significant breaches of the Code?

Q13 Further to A12, the obligation could be "narrowed" to matters that a particular member has personal knowledge of and if the matter is of a particularly "serious" nature.

Q14 Should there be a further provision about making false, malicious or politically motivated allegations?

A14 Yes. This should help to deter false, malicious or politically-motivated allegations and narrow the category of "serious" complaints covered under A13. To protect members from such allegations, the Code could contain a provision that any allegations found to be so could bring the alleger under breach of the Code and/or being referred to the Director of Public Prosecutions to consider

whether a criminal offence of perjury and/or misfeasance in public office had been committed by the alleged.

Q15 Does the Code of Conduct need to provide effective protection for complainants against intimidation, or do existing sections of the Code of Conduct and other current legislation already cover this area adequately?

A15 The current provisions have not, to our knowledge, caused any difficulties for complainants; even though, Heads of Paid Service and Monitoring Officers have - based on evidence appearing in newspapers and Courts - come under personal pressure from members when official complaints have been made against members. It may be that there is more of a case for protecting existing officer and councillor complainants by making it clear in the Code of Conduct that it will be a breach of the Code of Conduct for any member to interfere, harass, victimise, bully or in any other way influence or adversely effect the complainants with regard to any complaints brought against the member.

Personal Interests

Q16 Do you think the term 'friend' requires further definition in the Code of Conduct?

A16 The Standards Board for England's Guidance on "friend" has stood the test of time and it could now be incorporated into the Code of Conduct for Members if felt to be really essential / necessary. We are not convinced the definition is essential / necessary to be incorporated, at this stage, in the development of the Code of Conduct for Members.

Q17 Should the personal interest test be narrowed so that members do not have to declare interests shared by a substantial number of other inhabitants in an authority's area?

A17 Open and transparent local governance is essential for a healthy democracy. We are not convinced, therefore, that the personal interest test is causing any major difficulties in the principal local authorities or that it needs to be narrowed. The same, however, is not the case for "prejudicial interests" for which further amendments are needed and comments made later in this submission.

Q18 Should a new category of "public service interests" be created, relating to service on other public bodies and which is subject to different rules of conduct?

A18 This may be of some assistance, if the same are not then categorised as prejudicial interests. The definition would have to be clear to refer only to membership of a body as a direct result of the appointment of the Council concerned and not to appointment by a Political Party or some other appointment processes. The reference to different rules of conduct may lead to confusion and should not be proceeded with only with great caution as it may cause greater confusion for members / officers.

Q19 If so, do you think public service interests which are not prejudicial and which appear in the public register of interest should have to be declared at meetings?

A19 Open and transparent local governance is essential for local democracy and, as such, once declared on the register, it may be considered appropriate to regard such public service interest - assuming they were not prejudicial interests - as being "automatically declared" without necessarily having to be repeated at each and every meeting, unless the relevant member, Chairman of the relevant Committee / Forum or Monitoring Officer determines otherwise.

Q20 Do you think paragraph 10 (2)(a-c), which provides limited exemption from the prejudicial interest rules for some members in certain circumstances, should be removed from the Code of Conduct?

A20 These provisions are sometimes helpful, but when one looks at the particular circumstances, they tend to be dealing with grant / resource funding or entered decisions and are, therefore, prejudicial interests regardless of the exemption. If the "public service interest" category is to be enshrined into the Code of Conduct for Members, the paragraph 10 (2)(a-c)provisions could be removed without much difficulty.

There ought, however, to be a clear prejudicial interest provision introduced into the Code of Conduct for Members to the effect that a member's appointment on an outside body by the Council will continue to have a prejudicial interest in any grant aid or other resource approvals required of the Council relating to that body and, as such, s/he must leave the room and not influence the Council decision relating to that outside body. Clearly, the consideration of a general update report on the finances of that outside body should not, normally, trigger a prejudicial interest.

This level of clarity is essential in the development of the Code of Conduct for Members and should also serve to deal with the emerging agenda of change – over the coming years in local government - through even more and more partnership working.

Q21 Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups?

A21 Depending upon the definition of public service interests, we would be relaxed about public service bodies that have codes of conduct that are broadly

comparable to the Codes of Conduct for Members. We would also be relaxed about charities as they are already governed by legislation. Public bodies and charities should also be subject to A20 considerations.

Lobby groups should, however, be treated with caution as they have the greatest potential to cause conflict issues and confusion in the minds of the electorate / citizens of an area and the relevant member concerned in terms of ensuring clarity of roles and purpose. The recent SBE guide on lobby / pressure groups is particularly helpful and should be incorporated into the revised Code.

Prejudicial Interests

Q22 Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?

A22 No! The only exception to that rule would be where, as a member of the public, the Council would allow the same to speak on such matter. If the Council did, therefore, allow members of the public to speak – say, at planning/licensing committees – then the elected member should not be disenfranchised from that public right or have rights ‘lesser than’ ordinary members of the public in such events and should be allowed to address the meeting.

This would also have the effect of “rebalancing” what some see as a particularly onerous aspect of the *Richardson case* which serves only to disenfranchise, unnecessarily, many elected members and felt to be an unnecessary fetter on members in a properly run local authority.

Q23 Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?

A23 No! See A20 and A 22 for possible exceptions to this ‘general rule’.

Registration of Interests

Q24 Should members employed in areas of sensitive employment such as the security services, need to declare their occupation in the public register of interests?

A24 On balance, members should be given some latitude and flexibility in this area by allowing to withhold “some” information – on the grounds of proven / legitimate security concerns – not just general concerns to retain information as ‘confidential’ from the public - but would still be required to make known such information to the Monitoring Officer.

Q25 Should members be required to register membership of private clubs and organisations? And if so, should it be limited to organisations within or near an authority's area?

A25 Yes, limited to an authority's area unless the member also serves or is appointed to a body that has a wider remit / role than the particular area of the authority concerned. For example, a Regional Transport Authority will cover a much wider area than just one local authority and, as such, those members should be required to declare relevant interests relating to the area of the whole of the RTA's geographic area.

Gifts and Hospitality

Q26 Should the Code of Conduct require that the register of gifts and hospitality be made publicly available?

A26 Yes. Some local authorities - e.g. Birmingham City Council - already make their Registers of Gifts and Hospitality available through their websites, along with their Registers of Members Interests.

Q27 Should members also need to declare offers of gifts and hospitality that are declined?

A27 Yes, see A26. Some local authorities – e.g. Birmingham City Council - have already included such a requirement, which is extended to any Gifts and Hospitality “returned” by members in order to ensure open and transparent governance.

Q28 Should members need to declare a series of gifts from the same source, even if these gifts do not individually meet the threshold for declaration? How could we define this?

A28 Some flexibility is necessary in this area as it is evidently clear - from three years of monitoring requirements - that not many members are offered or receive gifts /hospitality over £25. Trying to "catch" the serial gifts givers is unlikely, therefore, to be a risk or likely to materialise, in practice.

Q29 Is £25 an appropriate threshold for the declaration of gifts and hospitality?

A29 As Monitoring Officers, we believe the limit is appropriate and reasonable; although we are aware that Birmingham City Council members would appreciate a much higher limit of, say, £100.

Other possible considerations / comments:

- balance between national / local determination to be ‘coded’
- recognise any emerging / best practice provisions from progressive local authorities

- role /distinction between strategic regulator v micro regulator
- reference to OPM Good Governance Guide
- wider community leadership re partnerships

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