

Agenda Item 4

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Report

Subject : Code of Conduct for Local Authority Employees
Report to : Standards Committee
Date : Monday 15 December 2008
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Consultation on the Introduction of a national Code of Conduct for Local Authority Employees by the Department of Communities and Local Government

1. Report Summary:

A report on the Consultation Document '**Communities in control: Real people, real power: Codes of Conduct for local authority members and employees**' was circulated at the last meeting of this committee, together with some draft options for responses. Members are very familiar now with issues relating to their own Code of Conduct and decided to consider their views and report back to this meeting. Issues relating to employee codes of conduct are less familiar. Members requested some information regarding employment issues generally, and this report sets out some relevant points.

2. Key points for consideration:

- 2.1 If and when agreed, the Code of Conduct for Officers will be made as an order under Section 82 (7) of the Local Government Act 2000. Its terms will be 'deemed to be incorporated' into all 'qualifying employees' terms and conditions of employment, removing the need to obtain the employee's consent to the code. Challenge to this cause of action for individuals or groups of individuals would be under the Human Rights Act, citing interference with Convention rights without proper justification. Potential areas for challenge might be the rights to privacy and to a family life. This is not to say that the challenge would succeed, but flags up the need to restrict rights to the minimum degree compatible with the public interest being promoted. It appears likely that by far the most contentious area of the Code will be the extent to which qualifying employees are required to publicly register personal interests.

The public interest being promoted here is maintaining public confidence in local government, which includes confidence in officers, particularly senior ones. It should be born in mind that some 'personal' details about senior officers may be released on demand under the Freedom of Information Act. Examples are inquiries as to e.g what salary range their post falls within, and what interests they may have declared to their managers under the current disclosure codes.



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The most common of these is the 'third party transaction' disclosure, requiring all officers to declare the interests of themselves or relatives and associates in contracts with the Council, and the duty contained in most local employee Codes of Conduct to declare to senior officers any personal interests relating to their areas of influence or decision making. Disclosure depends in each instance on the balance of the public interest in disclosure against the protection of personal data. Often such information is released in an 'anonymised' version. The major change in the consultation Code is that such information will now be routinely available, as is now the case with members' registers of interests.

2.2 One of the reasons given in this consultation document for the introduction of an employees' code is that as a statutory members code has now been introduced *'there is a reasonable expectation that officials undertaking functions delegated to them by members would have to abide by the same conduct regime as members when performing those functions'*. This rather overlooks the fact that public sector employees have been bound for many years by enforceable local codes, as well as their basic legal duties as employees, in respect of many of the areas covered by the proposed codes. Indeed, one reason why a statutory code of conduct for members was required was precisely because their unique legal status as elected members put them outside many of the acknowledged legal constraints on public servants.

2.3 **What is now proposed?** The Local Government Act originally proposed a Code for all local government employees and an additional 'Managers' Code'. What is now proposed is one Code for most local government employees. Some types of local government employees such as firefighters and lawyers are proposed to be exempt. The proposed Code will have 2 tiers – the first tier being 'Core Values ' which apply to all officers within the Code and the second tier specific requirements which will apply either to 'qualifying employees' . There are 2 proposed options for defining 'qualifying employees'. These are those who are either in politically restricted posts under Section 3 of the Local Government and Housing Act 1989 or who are performing functions 'delegated to them by elected members under section 101 of the Local Government Act 1972. 'Discussion points on the relevant consultation questions are set out below, with some suggested responses.

2.4

Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

It appears that in the current climate a mandatory code is desirable to maintain public confidence, even if many of the proposed elements are covered by other regulatory regimes. It should also reassure some members that they are not being more strictly monitored than officers.

Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

The stated rationale for excluding these groups is that the Employees' Code is not needed because these are professions which have their own codes of conduct already. However, not all of these other regulatory codes relate directly to the local government context, for example the solicitors' regulatory code, and, there seems to be no reason why these groups of workers should not be bound by the core values. Members who are in regulated professions are not excluded from the member code of conduct.

Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?

If the above argument is accepted, then no! Otherwise accountants, surveyors, architects, planning officers could be excluded.

2.6 The Core Values proposed are:

- Accountability – to their employing authority
- Political neutrality
- Mutual respect between members, the public and other employees
- Equality – compliance with policies
- Stewardship – dealing with public funds responsibly
- Avoiding conflicts of personal interests with professional duties
- Whistleblowing in respect of breaches of the Employees' code
- Treating information received in confidence
- Appointment and management of staff – avoiding any decision relating to employees or prospective employees with whom they have a close personal
 - relationship outside work

2.7 There are two significant introductions. The duty to report breaches of the Employee's Code is introduced at a time where the corresponding duty to report breaches of the Member Code has been removed. While whistleblowing is encouraged in most authorities it is not compulsory in respect of other types of maladministration and this could appear oppressive. Secondly, the requirement for employees not to be involved in any management decision in respect of employees with whom they have a close personal relationship outside work is a change. Currently such relationships should be declared but it is a local management decision as to what action to take.

Question 16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?

The requirement to report breaches of this Code should be removed in line with the Members' Code of Conduct

The 'Appointment of Staff' requirement should be narrowed to restrict its application to significant, enduring relationships, and to

significant or substantial management decisions, particularly in respect of smaller authorities. The requirement should however apply to all appointment and promotion decisions.

- 2.8 Part of the new Code is to apply only to 'qualifying employees'. These are to be either officers acting under delegation or those officers to whose posts are described as 'politically restricted.' The 'delegation model' as proposed lacks clarity. Arguably all employees of authorities are carrying out delegated functions to some extent! What the Code may have in mind are those top tier or 'proper' officers who have powers directly delegated to them by members, rather than under an officer scheme of delegation. The 'politically restricted' post model is by now much clearer and relates to officers over a certain earnings threshold and/or who work close to the member decision making process. It is also largely accepted now that accepting such posts will necessitate some restrictions on personal freedoms.

Question 17 Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?

It is recommended that the selection should be on the basis of politically restricted posts definition in the Local Government Act and Housing Act 1989, which is now well understood and is linked to positions of particular influence and responsibility. .

- 2.9 **Registration of interests.** The interests required to be registered are:'

'your membership, or position of control or management, in bodies exercising functions of a public nature (that is carrying out a public service, taking the place of a local or central governmental body in providing a service, exercising a function delegated by a local authority or exercising a function under legislation or a statutory power). Any business you might own or have a share in, where that shareholding is greater than £25,000 or have a stake of more than 1/100th of the value or share capital of the company. Any contracts between the authority and any company you have an interest in as above. Any land or property in the authority's area in which you have a beneficial interest.

The scope of the contractual disclosure is slightly more restricted than at present. Officers who feel they have special reasons may ask for some of the information to be registered but not made public. In particular officers may query why they must disclose their addresses: members will already have accepted the need for this as part of the election process. Officers also have contractual rights against their employing authority which may be enforceable if a reasonable and fair discretion is not exercised to protect their well being.

The role of parish council officers merits special consideration. They are relatively lowly paid, often working on a semi-voluntary basis. Also, the scope of decision making of parish councils is limited in scope, and the need for tight regulation of these employees needs to be demonstrated.

Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests?

If 'qualifying officers' are tightly defined the principle seems reasonable in principal authorities. The exception may be parish councils. Their officers often work for lower pay and the burden of disclosure may be disproportionate, particularly given the relatively restricted areas of decision making which they could affect. authorities. The Core Principles only should be sufficient

Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

Many officers may have reasons for not disclosing their home addresses which should be respected when the register is compiled

2.10 **Prejudicial interests**, for officers are more restricted in scope than for members: being 'a matter which affects the qualifying employee's financial interest or relates to a regulatory matter in which he or she has an interest and where a member of the public, who knows all the relevant facts, would reasonably think that his or her personal interest is so significant that it is likely to prejudice his or her judgement of the public interest.

Question 20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?

Yes

Question 21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Not if the 'qualifying officers' are tightly defined.

Question 22 Should the employees' code extend to employees of parish councils?

The Core Principles should apply to them, but the case for applying

the second tier requirements needs to be made.

3. Consultation Undertaken: None.

4. Recommendations:

Members note the report and agree or amend the draft responses to the consultation document.

5. Background Papers:

None

6. Implications:

- **Financial:** None
- **Legal:** These are incorporated into the report
- **Human Rights:** These are incorporated into the report
- **Personnel:** It has not been possible in the timescale for preparing this report to consult Personnel and Organisational Development. However, Members decisions will be circulated to relevant officers, including officers on Senior and Corporate Management teams.
- **Climate Change:** None
- **Council's Core Values:** The values in the government's proposed employee code of conduct will support the Council's Core Values
- **Wards Affected:** None