

The Standards Board for England's consultation on the review of the Code of Conduct

Recommendations to Ministers

At last year's Annual Assembly of Standards Committees, the then Minister, the Rt Hon Nick Raynsford MP, invited the Standards Board for England to carry out a review of the Code of Conduct in the light of its three years' experience working with the Code. The Minister said that, whilst the fundamental principles which underpinned the Code should be maintained, the Board should see whether there were areas where the Code could be made clearer or more effective.

The Board launched its consultation in February 2005 and consultation closed formally on 17 June. Over 1200 responses were received and an independent analysis of those responses was carried out on the Board's behalf by researchers from the University of Teesside.

This report sums up the Board's conclusions on how the Code should be amended based on its own experience and the consultation responses. The Board's overriding aim was to consider how provisions could be simplified, clarified or liberalised while remaining true to the underlying principles of the Code.

General conclusions

The Code should be clearer, simpler and more positive.

How it is enforced, nationally and locally, is as important as its content. The ten general principles set out in the Relevant Authorities (General Principles) Order 2001 should be included as a standard to be attained.

The Government should seek ways to simplify the Code wherever possible, clarify the rules around declarations of interests, and ensure the Code is seen in a more positive light as something which promotes effective local governance in a modern setting, rather than merely being a list of prohibitions of certain types of activity. In particular, the Board recommends that the Government should have the ten general principles on the face of the Code to remind members of the positive values they should be promoting. We believe the Code should, where possible, be written as a positive rather than negative statement. And we believe a better balance needs to be struck between the proper need to protect public decision-making from inappropriate influence, recognition of the key role members play as democratically-elected advocates on behalf of their communities, and the public expectation that members should be allowed to speak up when decisions are being taken which will have a wide impact on the community. This means that the rules governing prejudicial interests need to be reconsidered.

A key theme of the consultation was the need for a consistent application of the rules across the country, and for clear advice so that all members can understand the lines which they should not cross. Simplification of the Code will help to achieve some of this but the Board is committed to working in partnership with national bodies to ensure there is clear and unambiguous guidance to help councillors do their jobs more effectively while maintaining the standards the public has a right to expect.

The key provisions of the Code with which consultees were most dissatisfied were the provisions relating to the declarations of interests and these must be seen as a priority for the Government. The following section outline the Board's clear view on

how the provisions could be improved to strike a better balance between protection of decision-making and the vital role of councillors as democratically-elected advocates on behalf of their communities.

Personal and prejudicial interests

- .There should be greater support for the councillor's role as an advocate for their community.
- .There should be a reduction in the number of personal interests which need to be declared.
- .There should be greater local discretion to grant dispensations.

The Board believes the fundamental principle underpinning the need to declare interests, and in certain cases withdraw from the decision-making process, is a sound one if the public is to continue to have confidence that decisions are taken in the public interest rather than for personal gain and are seen to be done so.

However, there is a concern that the current rules are overly-restrictive (either in reality or in the way they are interpreted locally) and exclude members from discussing certain matters which their communities would expect them to be addressing or even, in certain cases, which they have been elected specifically to address. Given the changing role of most councillors, the Code needs to be seen to be supporting such local advocacy and the democratic right of a community to be represented when key matters which affect that community are under discussion.

In addition, there is a concern that too much time is spent at the start of a meeting declaring a wide range of personal interests which arise solely from the public role of the individual concerned.

The Board believes the following improvements should be made:

- a) The definition of a personal interest should be restricted so that members do not have to declare an interest where it is merely something that affects them no more than a wide community.
- b) Interests which arise solely because a member serves on another public body should be treated differently from interests which arise from a member's private life. Such public service interests should only be required to be declared when a member speaks on a related subject, unless the interest is also prejudicial. It would only be prejudicial if it related directly to the public body (for example, a grant application on its behalf) or was a regulatory decision which directly affected that body or its aims. In such cases, the member should be invited to address the meeting and answer questions on behalf of the body but then withdraw before the substantive discussion so that they are not seen to be influencing the debate.
- c) Prejudicial interests where the member is advocating on behalf of an outside body, such as a charity or local pressure group, should be treated in the way outlined in b) above.
- d) The Government should also give local authorities broader powers to grant exemptions to members with prejudicial interests who nevertheless are speaking on behalf of their constituents.

Register of interests and register of gifts and hospitality

.The types of interests which need registering should remain unchanged.

The Board believes that no major changes are needed in this area although it should be made clear that the register of gifts should be publicly available in the same way as the register of interests, and some of the exact wording of the provisions of the register of interests should be re-examined so it is clear to members what interests the Government intends should be registered.

In addition to these important provisions around registration and declaration, the Board has concluded the following points as ways in which the important provisions relating to personal behaviour can be clarified and simplified while remaining true to the Code's underlying principles.

Disrespect

There should be a specific provision on bullying.

The Code should continue to address disrespect. No definition is needed as each case must be considered on its merits. However, the Board's view is that there should be an additional provision in the Code which makes it clear that bullying behaviour, in particular, should not be tolerated. The Board's experience has taught it that, in a small number of cases, there is a culture of bullying of fellow members, of officers and of the public, and a specific provision in the Code would be a strong signal of disapproval of such behaviour. Whilst legitimate challenges of poor performance will always be necessary, some of the behaviour seen by the Board has been unacceptable and the Board would welcome the Government's recognition that such behaviour has no place in modern local government.

Disclosure of confidential information

.Members should be able to disclose information in the public interest.

.The Government needs to consider the impact of the Freedom of Information Act on confidentiality.

The Code should be explicit in allowing members to disclose confidential information where it can be demonstrated that such disclosure is in the public interest. The Board does not wish the situation to arise where a member could technically fall foul of the Code by disclosing information which the authority has decided was confidential when such information would have been accessible under freedom of information provisions. The board believes some in local government continue to treat too much information as confidential and, given the Government's commitment to freedom of information, consideration needs to be given both to how the Code can address this situation and whether the local government access to information provisions need to be revisited.

Disrepute

Certain behaviour outside of official duties should continue to be regulated but it should be limited to unlawful activities.

The Board believes that the Code should continue to cover certain aspects of conduct which do not relate directly to official duties. The Board recognises the views expressed by some that only matters relating to council business should be regulated. However, some of the private activity that the Board has considered does have the potential to bring a member's authority or office into disrepute so the Board believes that this provision should continue to have some wider application, bearing in mind also that one of the ten general principles is a duty to uphold the law. However, the Board believes the provision could be clarified to demonstrate that it is only unlawful activity committed outside of official duties which should be regulated and not activities of which certain individuals may merely disapprove.

Misuse of resources

.Local protocols should be enforced locally where appropriate. .Serious misuse of resources, particularly for political benefit, should be regulated nationally.

Many authorities have effective local protocols governing the use of council resources. All authorities should be encouraged to adopt effective protocols, enforcement of which should broadly be left to the local level, with the Board only becoming involved where there has been alleged serious misuse of public resources. In addition, consultation clearly showed that the main concern was about misuse of public resources for party-political advantage. The Government should therefore consider how to clarify the Code's provisions to better control such abuse, and how it should relate to the existing publicity code for local authorities.

Duty to report breaches

.The duty to report breaches should be abolished.

.There should be protection against intimidation where people do complain. .All involved in the process, including members themselves, need to take greater steps nationally and locally to discourage vexatious complaints.

The provision of the Code which requires members to report breaches to the Board has been unpopular. The Board believes it had two underlying purposes -to prevent members from turning a blind eye to serious misconduct by their colleagues and to protect members who wished to come forward and report fellow members in spite of pressure to do otherwise. The Board does not believe the present provision achieves either of these aims satisfactorily, and instead has led to members using the provision as a pretext for making trivial allegations to cause mischief.

The Board considered whether the provision should be retained but limited only to allegations of serious misconduct. Whilst this was the most popular option in consultation, on reflection the Board thinks any attempt to draft such a provision would lead to subjective views on what was or was not serious. This would lead to arguments about what should and should not have been reported and would be

unlikely to address the concern about trivial allegations. On balance, therefore, the Board believes this provision can be deleted.

However, the two underlying concerns the original provision sought to address need to be dealt with. Whilst the Board believes the vast majority of members would not turn a blind eye to serious misconduct, it believes that for those handful of cases where there does appear to be a serious conspiracy, existing powers in the Code can be used to deal with the issue. The Board is also concerned that members who do report serious misconduct should be protected from victimisation in the same way that employees are protected by law. One way of doing this would be to have a provision prohibiting intimidation of a complainant or witness and the Government should consider such an option.

In addition, the Board is committed to work with the Government to find further ways of reducing politically-motivated complaints. The Board is particularly concerned about examples it sees of allegations being reported in the local press, often before they have even been sent to the Board. Such activity damages the reputation of local government as a whole, and all concerned need to find better solutions to prevent such mischief. This may be outside the scope of the Code review, but we wish to explore options with Government, representative bodies and local authorities as to how the ethical framework can be used more sensibly to the benefit of all.