

Item no.

Report to: **Standards Committee**

Date: **13 February 2007**

Report of: **Monitoring Officer**

Subject: **Consultation on Amendments to the Model Code of Conduct for Local Authority Members**

Ward: **All**

1. **PURPOSE OF THE REPORT**

To give the Standards Committee an opportunity to respond to the consultation paper, the deadline for responses being 9 March 2007.

2. **CONSULTATION**

None at the time of dictating this report but I will update the Committee on any responses to the Association of County Secretaries which come to light before the meeting.

3. **BACKGROUND**

DCLG have now published the consultation paper they promised with a view to amending the original Code of Conduct. They have invited comments from interested parties. They are working to a very tight timescale if the new code is to be available for Members to sign up to after the May 2007 election.

4. **SUMMARY OF THE PROPOSED CHANGES**

(a) **Deletion of the reference to unlawful discrimination in Paragraph 2(2)(a).**

The existing code requires a Member to promote equality by not discriminating unlawfully against any person. Adjudication Panel finding in January 2005 concluded that the Panel had no jurisdiction to make findings of unlawful discrimination. The amendment is not intended to impair the need to ensure that Members are polled a duty to provide equal treatment. It is intended to deal with the technicality of who can declare discrimination unlawful.

(b) **Bullying**

During the course of earlier consultation it was recognised that the absence of any specific reference to bullying behaviour was a weakness of the Code. Such misconduct as traditionally ? with under the disrepute heading. It is proposed to add a specific provision to indicate that Members must not bully any person.

(c) **Disclosure of Confidential Information**

It has been recognised that the prohibition of disclosure of confidential information without a public interest exemption contravenes the European Convention on Human Rights. The proposal is to permit an exemption when the Member believes in good faith and reasonably that disclosure is in the public interest.

It is proposed that guidance will be given on the kind of circumstances where Members might reasonably believe that disclosure is justified. Examples given are if it indicates evidence of a criminal offence, where the Authority is failing to comply with its legal obligations, where a miscarriage of justice has occurred or may occur and where the health and safety of anyone has been endangered or the environment damaged.

Consultees are asked whether the proposed text on the disclosure of confidential information strikes an appropriate balance between the need to treat certain information as confidential but to allow some information to be made public in defined circumstances when to do so would be in the public interest.

(d) **Behaviour outside official duties**

The Standards Board has recommended amending the Code so that the terms for Member's behaviour in private life conduct which amounts to a criminal offence as well as behaviour which would be regarded as criminal but for which conviction has not been secured could be regarded as bringing the Member's office or authority into disrepute. The High Court considered an appeal by the Mayor of London challenging the Standards Board right to prescribe behaviour of Members in their private capacity under Section 52 of the Local Government Act 2000. The Court Judgement gave examples of cases where it did not think the Code should apply and those included shoplifting and drunk driving. Such action will not now be caught by the Code if the offending conduct had nothing specifically to do with the Member's position as a Councillor. It is proposed to amend the Local Government Act 2000 in the current Local Government and Public Involvement in Health Bill to broaden the powers. If those amendments are enacted Ministers are minded to provide that only private behaviour for which the Member has been convicted by a court should fall under the Code and not behaviour falling short of a criminal offence.

The consultation asks whether subject to powers being available is the proposed text which limits the proscription of activities in Member's private capacity for those activities which have already been found to be unlawful by the courts appropriate?

(e) **Commission of Criminal Offence before taking Office**

DCLG agree with the Standards Board that if a Member has committed a criminal offence before taking office but is not convicted until after taking office then this offence should be capable of being taken into account when considering a disrepute charge. It is proposed to introduce a new sub-paragraph to implement this amendment.

(f) **Using or seeking to use improper influence**

The existing wording does not adequately proscribe unsuccessful attempts to use influence improperly. It is proposed that the words “or attempt to use” should be added.

(g) **Publicity Code**

It is proposed to amend Paragraph 5 to make it clear that in addition to the prohibition on using resources improperly for political purposes Members should also have regard to the Government’s Code of Recommended Practice on Local Authority Publicity.

Consultees are asked whether the Code of Recommended Practice on Local Authority Publicity serves a useful purpose. If it were abolished should some or all of its provisions be published in a different way e.g. by guidance assisted by Local Government representative bodies or should Authorities be left to make their own decisions without central guidance? Should Authorities not currently subject to the Publicity Code be required to follow it or should the current position with regard to them be maintained.

(h) **Reporting Breaches of the Code and Prescribing Intimidation**

The recommended amendments are intended to remove one of the most difficult provisions in the existing Code namely that failure to report another Member’s breach of the Code is a breach by the Member who fails to take action. It is proposed to protect those who do report from intimidation that a new sub-paragraph be added prohibiting a Member from intimidating or attempting to intimidate a complainant or witness, persons carrying out the investigation, support staff and others in the case.

(i) **Gifts and Hospitality**

Currently any gift or hospitality over the value of £25.00 must be reported to the Monitoring Officer. There is no requirement to include it in the Register of Members Interests. The proposal is that to reinforce principals of accountability and openness of conduct, information about gifts and hospitality should be included in the Register of Interests. This would apply to gifts or hospitality worth over £25.00. It would cease after five years following the receipt of the gift or hospitality although that receipt would remain on the register as a personal interest.

Consultees are asked whether the proposed text with regard to gifts and hospitality adequately combines a need for transparency as well as proportionality in making public information with regard to personal interests.

(j) **Body Influencing Public Opinion on Policy**

There is a proposed amendment to make it clear that this includes a political party. We have always taken the view that this was included anyway.

(k) **Interests of Family Friends and those with a close personal association**

This has always been a difficult definition and may not be made any easier by the proposed addition of any person with whom the Member has a close personal association. The purpose is to include business associates who may not fall in the definition of friends.

We are asked what the proposed text relating to friends family and those with a close personal association adequately cover the breadth of relationships which ought to be covered to identify the most likely people who might benefit from decisions made by a Member including family friends, business associates and personal acquaintances.

(l) **Definition of Personal Interest**

This is an important changes to improve local democracy by permitting Members to participate in discussions where they would not be affected by a matter to a greater extent than Council Tax payers within their own area of residence.

(m) **Disclosure of Personal Interest**

The present Code would be contravened by failing to disclose a relative's interest of which the Member was not aware. It is quite reasonably suggested that this be amended to apply only to interests which the Member was aware or ought reasonably to have been aware.

(n) **Public Service Interest**

This will be a new category arising where a Member is also a member of another public body. It is intended to avoid repeated declaration of interest where the Authority has appointed the Member to the other public body whose business they are discussing. The interest would only need to be declared if the Member chose to participate on the relevant issue by speaking.

(o) **Prejudicial Interest and List of Exemptions**

Three new items have been added to the list which are not regarded as prejudicial. They are indemnity to Members, setting of council tax and considering whether or not the Members should become a freeman of the Authority. Consultees are asked whether it would be appropriate for those new additions to be made.

(p) **Overview on Scrutiny Committees**

An amendment is proposed which should prevent a Member scrutinising a decision of a committee of which he was a member at the time even though he may not still be a member at the time of the scrutiny.

(q) **Participation in relation to prejudicial interest**

It is intended to provide a clearer prejudicial interest test to apply for public service interest and where Members intend to make

representations. It is recommended that the public service interests should only be prejudicial where the matter relates to financial affairs of the body concerned or it relates to determination of any approval consent licence or permission e.g. in respect of planning and licensing in relation to that body. In other cases the Member may speak and vote at the meeting. Consultees are asked whether that relaxation is appropriate.

(r) **Sensitive Information**

It is proposed that there be an exclusion to permit Members not to include on the register of interest sensitive information such as their address, where it is likely to lead to the Member being subject to violence or intimidation.

A copy of the full consultation document is annexed to this report as background material.

5. **IMPLICATIONS**

(i) **Financial**

None

(ii) **Legal**

The Code ultimately adopted will go on the standards of behaviour and the potential for complaints and breach of the Code.

(iii) **Policy**

None

(iv) **Risk**

None

(v) **Communications**

None

(vi) **Corporate**

None

(vii) **Equality and Diversity**

One of the proposals is that centuries of interpretation using the male of the species is to be replaced by gender neutral language.

(viii) **E-Government**

None

(ix) **Procurement**

None

6. **RECOMMENDATION**

The Standards Committee are invited to instruct the Monitoring Officer on the responses they wish to send to this consultation document. Background papers, DTLT consultation paper and draft amendments to the Code of Conduct.

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1 February 2007