

<b>TITLE:</b>	<b>CLG CONSULTATION ON THE CODE OF CONDUCT</b>
<b>TO/ON:</b>	<b>STANDARDS COMMITTEE – 21 NOVEMBER 2008</b>
<b>BY:</b>	<b>MONITORING OFFICER</b>

## **1.0 SUBJECT MATTER AND PURPOSE**

The purpose of this report is to inform Members of the contents of the CLG Consultation Paper on the Councillors Code of Conduct and the proposal to introduce model codes for local government employees. The Standards Committee is invited to consider the recommended response to CLG.

## **2.0 BACKGROUND**

The Members Code of Conduct was updated with effect from May 2007. It was recognised that further amendment would be necessary once the Local Government and Public Involvement in Health Act 2007 had become law to deal with the regulation of members conduct when acting in a non official capacity. The weakness in the original code in this area had been demonstrated by the successful challenge to a complaint against Ken Livingstone during his days as Mayor of London.

The consultation document also proposes the introduction of a Model Code of Conduct for local government employees. This development has been awaited for years.

## **3. CONSULTATION QUESTIONS**

It is proposed that the amended Code should provide that “members must not bring their office or authority into disrepute by conduct which is a criminal offence”. We are asked whether we agree that the members code should apply to a members conduct when acting in their non official capacity. It is my view that misbehaviour amounting to a criminal offence should be capable of control under the Code of Conduct because it can have a prejudicial effect on the reputation of the Councillor and indirectly on the Council of which he/she is a member.

### **Should all criminal offences be caught**

The proposal is to define a criminal offence as one for which a member has been convicted in a criminal court but for which a member does not have the option of paying a fixed penalty, instead of facing a criminal conviction. That would exclude minor motoring offences, parking offences and dropping litter, as well as cautions and orders falling short of a criminal conviction by court. In view of the extended use of fixed

penalties it may also exclude some minor public order offences. If you are the portfolio holder for the environment then dropping litter might do nothing for the Council's credibility. The choice is whether to exclude "minor" criminal offences to avoid the Standards Committee receiving complaints which may not warrant action or to make any conviction a potential breach and rely on Standards Committee to deal appropriately with trivial matters which do not affect suitability for office. We are asked whether we agree with the definition of criminal offence for the purpose of the Members Code. If we do not agree with it then we are invited to propose alternatives.

### **Official Capacity**

The proposal is that official capacity be defined as being engaged in the business of your authority, including the business of the office to which you are elected or appointed or acting claiming to act or giving the impression that you are acting as a representative of your authority. We are asked whether we agree with that definition. I believe that it is sufficiently comprehensive to distinguish when a member is acting in an official capacity and when not. It is particularly important that claiming to act as a representative when you do not in fact have that status is caught by the provisions.

### **Offending abroad**

It is proposed that criminal conduct abroad would be a breach of the code but only where the conduct will also constitute a criminal offence if it was committed in the UK. We are asked whether we agree with that interpretation which appears suitably balanced to me. There is a technical issue on the wording which may merit amendment to prevent any offences slipping through the net. The draft implies an offence must be subject of a conviction in the country it was committed. Some offences can be committed in one country and prosecuted in another and there is no reason why they should fall outside the controls.

### **Procedure**

It is possible that misconduct involving a criminal activity may be the subject of a complaint prior to conviction. In those circumstances it is proposed that the investigation should not proceed until the criminal process has been completed. That appears entirely sensible and consistent with the manner in which other civil regulatory issues overlapping the criminal law are dealt with.

### **Parish Councils / members speaking when they have a prejudicial interest**

It is proposed that a minor amendment be made to bring Parish Councils in line with principal councils so that the Model Code would entitle parish members to speak on matters where they have a prejudicial interest if members of the public have a similar right. This

is a relaxation enjoyed by principal council members on adoption of the model code but there currently has to be a specific resolution to vary the Parish model.

There are one or two minor drafting amendments which do not need to concern the committee. If members considered there are any aspects of conduct which are currently included in the code but are not required we are invited to specify them and give reasons.

I have seen proposals that would include closing a loophole which might permit a suspended member to misbehave without sanction because he could not be acting in an official capacity whilst suspended.

There is also concern that the present Code may not be tight enough to control misuse of confidential information in a private capacity. I would recommend supporting representations to close that loophole.

This might be an opportunity to raise the threshold of £25 for declaration of gifts /hospitality to reflect inflation .

### **Undertakings to comply with the Code**

There will be a requirement to give a fresh undertaking to comply with the new code once it comes in to effect. We are asked whether the timescale of two months from adoption of the code will provide members with sufficient time to undertake to observe the code. I would regard that as more than adequate.

### **General Principles**

The preamble to the code sets out ten principles of public life on which the code is based. It is proposed to make an amendment by providing the ten principles apply when acting in an official capacity and by adding a new principle which will be specified as applying to a member acting in a non official capacity. That principle is a duty to abide by the law and not engage in conduct which constitutes a criminal offence. I would question whether that is strictly necessary but if CLG are keen to avoid any scope for potential future challenge by separating official and non official capacity the wording adopted there looks reasonable.

I am aware of a comprehensive set of predominantly technical issues likely to be raised by Peter Keith Lucas of Bevan Brittan Solicitors. He has encouraged Monitoring Officers to incorporate those comments in their Council's response. Many of them are valid drafting criticisms of the present Code and the legislation. I have not troubled you with the detail although this report does include several amendments to my initial draft to reflect issues of principle raised by Peter. I would welcome your authority to confirm in our response that we would request CLG to consider the potential drafting improvements highlighted in his response.

#### **4.0 MODEL CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES**

Easington, like many other Councils, have adopted their own code, rather than wait for the CLG and Parliament to bring England into line with Wales where a model code has been in force for a number of years. The first question is whether we agree that a mandatory model code of conduct for local government employees which would be incorporated into their terms and conditions of employment is needed. There have been mixed views expressed on this subject. It would seem appropriate that there are standard provisions across the country regulating the behaviour of employees as there are for councillors. It may be that some authorities will think that their own code is better than the proposed mandatory model but it may be difficult to justify differences between councils on such common matters. It is proposed that authorities will be free to adopt supplementary provisions beyond the employees code if they wished. It is difficult to challenge a concept that a mandatory minimum standard for conduct should be prescribed.

#### **6.0 EXEMPTIONS**

It is suggested that employees in professions that are covered by their own code of conduct such as fire fighters, teachers, community support officers, solicitors etc should not be caught by the employees' code. We are asked whether we agree with that proposition and if there are any other categories of employees who should be similarly excluded. I can see the justification for excluding staff who are effectively regulated under other provisions. The exclusion should be limited to areas which are already regulated .

#### **7.0 NATURE OF THE CODE**

CLG proposed a two tier model. The first tier is based on the Welsh provisions and will apply equally to all employees and will enshrine the core values that it is reasonably expected every authority employee would abide by. The second tier drawing on the members code will apply to qualifying employees defined by seniority or by virtue of the fact that they will be carrying out delegated functions. The model code lists proposed core values, namely accountability, political neutrality, appropriate relations with members, public and other employees, equality, stewardship, avoidance of conflict of interest, whistle blowing, treatment of information, fairness in appointment of staff and co-operation with investigations by monitoring officers. We are asked whether the core values described above correctly reflect what should be enshrined in the code. If not satisfied with the list we are invited to add to it, or amend it by deleting anything inappropriate. I have appended to this report a copy of the current code of conduct for Easington employees. This code was introduced in anticipation it would be replaced ultimately by a national model. I would recommend that the committee endorse the core values. Wherever possible the wording of the Code should mirror the Councillors Code. The proposals in the

Consultation imply that unnecessary differences in terminology may be introduced which would be undesirable.

## 8.0 **QUALIFYING EMPLOYEES**

The second tier of controls is based on the seniority of posts and the ability to influence council decision making. There is an alternative of limiting qualifying employees to those who are politically restricted rather than applying the power to make delegated decisions as the test for qualification. Consultees are invited to respond by indicating which model they deem to be appropriate. I can see the logic for extending this control to all those who take decisions in the council's name by virtue of formal delegation powers to them, if indeed it is not appropriate to place all obligations on employees across the board. Concern has been expressed however about the practicality of making the power to take delegated decisions the test as to whether the Code applies to a particular employee. There is a considerable disparity in practice between authorities on delegations and I can see the attractiveness of using an established concept of politically restricted posts as the criterion.

Values for qualifying employees

This code would cover:-

Not compromising the impartiality of officers of the authority; not abusing your position in public; considering advice provided to you and giving reasons; declaring personal interests;

We are asked whether the code should contain a requirement for qualifying employees to publicly register any interest. The list of interests is similar to those affecting members. It is not immediately apparent from the consultation paper that this requirement will relate to members of the family and close friends of the qualifying employee and I can see no justification for adopting a different approach to the requirement imposed on members. There may be arguments that interests should be registered so that Management are aware of them but giving public access is an infringement of privacy rights.

Parish Councils

We are asked whether the employees' code should be extended to employees of parish councils.

The Committee is invited to consider the proposed response to the consultation paper and to instruct the Monitoring Officer on any response to be submitted.

**DAVID TAYLOR**  
**Monitoring Officer**