

Item 12

REPORT TO STANDARDS COMMITTEE

8th February 2007

REPORT OF SOLICITOR TO THE COUNCIL AND MONITORING OFFICER

REVISED MODEL CODE OF CONDUCT FOR MEMBERS

1. SUMMARY

- 1.1 Recently, the Government has published a Consultation Paper, which seeks views on a proposed new model Code of Conduct for Members. This report provides an explanatory commentary on the new proposals.
- 1.2 The Local Government White Paper, Strong and Prosperous Communities, published in October 2006 announced the Government's intention to put in place a clearer, simpler and more proportionate Code of Conduct for Members, which would include changes to the rules on personal and prejudicial interests.
- 1.3 The Government is also proposing to combine the current four individual Codes into one consolidated Code. The four model Codes are the Local Authorities (Model Code of Conduct) Local Authorities (Model Code of Conduct)(England) Order 2001, the Parish Councils (Model Code of Conduct) Order 2001, the National Park and Broads Authorities (Model Code of Conduct)(England) Order 2001 and the Police Authorities (Model Code of Conduct) Order 2001.

2. RECOMMENDATIONS

- 2.1 That Standards Committee be appraised of the Report and future changes be noted.

3. DETAIL

- 3.1 The decision to amend the Code so as to make it more effective and proportionate formed part of the Government's wider review of the conduct regime, the Code will be made clearer but will maintain a rigorous approach to the identification of serious misconduct.
- 3.2 **Unlawful Discrimination:** Paragraph 2(a) of the current Code provides that a Member must promote equality by not discriminating unlawfully against any person. It is proposed that any reference to unlawful discrimination will be deleted. In an Adjudication Panel finding in 2005 it was concluded that the Panel has no jurisdiction to make findings of unlawful discrimination. Therefore, this deletion is to ensure that unlawful discrimination is not an issue on which a Panel may be required to make a determination. The Government propose to replace

Paragraph 2(a) with a provision proscribing Members from doing anything that would seriously prejudice their authority's statutory duties in regards to equality. The provision in the current Code requiring Members to treat others with respect will be retained.

- 3.3 **Bullying:** Currently, the Code makes no specific reference to bullying. It is proposed that a provision indicating that Members must not bully any person should be added to the Code. For example, that bullying of other Members, Officers or anyone else is a breach of the Code of Conduct. It is to be made clear that bullying should play no part in Member's conduct.
- 3.4 **Disclosure of Confidential Information:** Paragraph 3(a) of the Code currently provides that a Member should not disclose information given to them in confidence or which the Member believes to be of a confidential nature. An Adjudication Panel decision confirmed as a matter of law, that Paragraph 3(a) of the Code fails to take into account Article 10(1) of the European Convention on Human Rights and therefore, the Code should read so as to allow for the disclosure of information of a confidential nature where it is in the public interest to do so.
- 3.5 **Behaviour Outside Official Duties:** Paragraphs 4 and 5 of the Code will be amended so that in terms of a 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 a conviction has not been secured, could be regarded as bringing the Member's office or authority into disrepute under the terms of the new Code.
- 3.6 **Using or Seeking to use improper influence:** Paragraph 5(a) currently provides that a Member must not in his or her official capacity or any other circumstance use his or her position as a Member improperly to confer on or secure for himself or herself or any other person an advantage or disadvantage. A literal interpretation of this provision might mean that it does not cover unsuccessful attempts by the Member to use his or her position in this way. It has been proposed that this paragraph should provide that the Member should not either use or attempt to use his or her position to confer an advantage or disadvantage for himself or herself or anyone else.
- 3.7 It is proposed that a specific provision be added to Paragraph 5(b)(ii) to clarify the intention that an authority's resources should not be used improperly for party political purposes. The Government believes that it would be sensible to complement Paragraph 5 with the Code of Recommended Practice on Local Authority Publicity to make it clear that Members should not use resources improperly for political purposes.
- 3.8 **Reporting Breaches of the Code and Proscribing Intimidation:** Paragraph 7 of the existing Code provides that a Member must, if he or she becomes aware of another Member's breach of the Code, make an allegation to the Standards Board of that breach. It is proposed that

this requirement to report other Members' breaches of the Code be deleted, as it has been perceived by some as encouraging Councillors to make trivial allegations.

- 3.9 However, at the same time, to protect Members who do report serious misconduct from victimisation, a provision is proposed to be added prohibiting a Member from intimidating or attempting to intimidate a complainant or witness, people carrying out the investigation, support staff and others involved in the case.
- 3.10 **Gifts and Hospitality:** The Government wish to reinforce the principles of accountability and openness of the conduct regime by requiring that information about gifts and hospitality be included in the Register of Interests. Therefore, it is proposed that the receipt of gifts and hospitality over £25 in value should be an interest that should be registered as a personal interest. However, to ensure that this provision is proportionate, the requirement to disclose the personal interest in a meeting would cease after five years following the receipt of the gift or hospitality, although would still remain on the Register as a personal interest.
- 3.11 **Interests of family, friends, and those with a Close Personal Association:** It is proposed that the definition of personal interest include matters affecting a range of personal, business and professional associates, as well as people who would be specifically termed as "friends". Reference has therefore been added to any person with whom the Member has a close personal association. The definitions of family and friend will be deleted from the Code.
- 3.12 **Definition of Personal Interests:** Paragraph 8 of the current Code provides that Members have a personal interest if they would be affected by a matter to a greater extent than other council taxpayers, ratepayers or inhabitants of the authority's area. The Government wish the Code to allow Members to be able more frequently to take part in council meetings, which their communities expect them to participate in, or on issues, in some cases, which they have been elected specifically to address. It is therefore proposed that the current requirement that a personal interest arises where a decision on it might be regarded as affecting the Member to a greater extent than other inhabitants of the authority's area, be replaced with a requirement that the personal interest arises only where the interest might reasonably be regarded as affecting the Member to a greater extent than the majority of other council taxpayers, ratepayers or inhabitants of the ward, which is affected by the particular matter.
- 3.13 **Disclosure of Personal Interests:** The proposals suggest that it would be sensible and more proportionate to amend the provisions relating to disclosure of personal interests. It is intended that an interest is only disclosable in respect of a family member, friend or a person with a close personal association if the Member is aware or ought reasonably to be aware of the interest held by that person.

- 3.14 **Public Service Interests:** A new definition of ‘public service interest’ is to be added to the Code. It is defined as an interest, which arises where a Member is also a member of another public body, to which they have been appointed or nominated by the authority, or of which they are a Member in their own right. Members would be required to enter any such interest they have in the Register of Interests.
- 3.15 However, instead of requiring that public service interests be declared at the start of any relevant business, it will be that such interests only be declared at the time when the Member speaks on the relevant issue. The aim of this is to avoid the current onerous requirement by which lengthy periods at the start of business on a particular issue can be spent by Members in declaring their personal interests in the particular issue, even if many or all of those members have no intention to take part in the debate on that subject.
- 3.16 The Government wish to provide for clearer and more proportionate rules to apply in respect of participation in council meetings for those who have public sector interests, for example, those who are Members of another authority or a charity or lobbying body, and for those who are attending meetings to make representations.
- 3.17 It has been considered that the fact that an issue considered by one body may affect another body with which the Member is involved does not necessarily mean that the Member’s judgment of the public interest will be prejudiced. In such cases, the public service interest should only be considered prejudicial where:
- (a) the matter relates to the financial affairs of the body concerned, or
 - (b) where the matter relates to the determining of any approval, consent, licence or permission (e.g. in respect of planning and licensing) in relation to the body.
- 3.18 **Prejudicial Interests – List of Exemptions:** Three new items have been added to the list of interests, which are not to be regarded as prejudicial. This will mean that a Member will not have a prejudicial interest where the matter relates to the authority’s functions in respect of:
- Indemnities. This addition arises from the Standards Board’s experience of cases where, for example, Members have felt unable to vote in discussions on the issue by the authority of indemnities, which might relate to themselves, as well as a number of other Members of the Council.
 - The setting of council tax. We understand that some Members have been concerned that in discussing this issue, prejudicial interests may arise for them because of their connection with an organisation funded from an operational budget, which is being set by the council tax settlement. We consider that such an interest is likely to be too remote to be a prejudicial interest.

- Considering whether or not the Member should become a freeman of the authority.

3.19 **Sensitive Information:** Sensitive information, for example, where Members are employed in areas of sensitive employment, such as certain types of scientific research, need not be made public if to do so would threaten the safety of the Member or their family.

4. RESOURCE IMPLICATIONS

4.1 No specific financial implications have been identified.

5. CONSULTATIONS

5.1 This report has been prepared for Standards Committee immediately following publication of the consultation paper.

6. OTHER MATERIAL CONSIDERATIONS

6.1 All material considerations have been taken into account in the contents of this report. In particular, risks may arise unless Members of Council are fully appraised on standards matters.

7. OVERVIEW AND SCRUTINY IMPLICATIONS

7.1 None apply.

8. LIST OF APPENDICES

8.1 None apply.

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Wards: N/A

Key Decision Validation: N/A

Background Papers

Amendments to the Model Code of Conduct for Local Authority Members
Consultation Paper