
REVISED MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS

1 SUMMARY

- 1.1 This report provides details of a Government consultation on proposed changes to the Members' Code of Conduct. The main report outlines the changes proposed with more detailed consideration at Appendix 1. A suggested response to the questions raised in the consultation document is included at Appendix 2.

2 INTRODUCTION

- 2.1 The Local Government Act 2000 set the ethical framework for local government and this Council formally adopted the model Code of Conduct at its meeting on 18 December 2001. The Code is incorporated into the Council's Constitution.
- 2.2 On 22 January 2007 the Department of Communities and Local Government (DCLG) published a consultation paper seeking views on a proposed new model Code of Conduct. The closing date for response is 9 March.
- 2.3 The Government's intention is "to put in place a clearer, simpler and more proportionate code of conduct for members of Local Authorities which includes changes to the rules on personal and prejudicial interests" and to bring the amended code into force in time to be adopted at annual meetings in early May 2007.
- 2.4 The revised Code appears to have been drafted with a view to avoid the need for further revision when the Local Government and Public Involvement in Health Bill becomes law later in the year. However, it remains to be seen whether this will be achieved.
- 2.5 A copy of the consultation paper is circulated with this report and includes the draft model Code of Conduct Regulations and questions posed by DCLG.

3 SUMMARY OF PROPOSED CHANGES

- 3.1 The main changes to the Code proposed are to:-
- (1) have one consolidated code covering all authorities (to replace the 4 codes currently in existence)
 - (2) remove the proscription on unlawful discrimination
 - (3) specifically proscribe bullying
 - (4) allow for the disclosure of confidential information where it is in the public interest to do so

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- (5) require a Member not to bring the authority into disrepute. Offending conduct would extend to conduct in the Member's private capacity provided that:-
 - a) it has been subject to a successful prosecution; and
 - b) the Local Government & Involvement in Health Bill becomes law to amend sections 49 and 52 of the Local Government Act 2000
 - (6) require regard to be paid to the Government's local authority publicity code
 - (7) delete the requirement to report suspected breaches of the code by other Members
 - (8) require gifts and hospitality of over £25 in value to be registered in the register of members' interests. (Currently there is a separate register for such matters)
 - (9) require the disclosure of such gifts or hospitality at a meeting within five years of such registration
 - (10) define personal interests as including the well-being or financial position of the Member, family, friend or 'any person with whom the Member has a close personal association'
 - (11) define a personal interest as one affecting the Member to a greater extent than the majority of his or her ward residents
 - (12) create a 'public service interest', defined as membership of another local authority or a management or control position of a public authority or with reference to a body to which the Member is appointed by the Council
 - (13) provide that a public service interest would not be a prejudicial interest barring participation in debate, unless it affects the financial affairs of the body concerned or it relates to an approval, consent, licence, permission or registration of that body
 - (14) provide that a Member with a prejudicial interest may, with the consent of the meeting, attend a meeting for the purpose of making representations, answering questions or giving evidence but must then withdraw from the room
 - (15) proscribe the intimidation of complainants and witnesses in cases of complaint to the Standards Board for England (SBE) or Monitoring Officer (MO)
 - (16) extend the exemptions where Members should not regard themselves as having prejudicial interests to include:-
 - a) where indemnities are being considered;

- b) the setting of council tax;
 - c) where the Member is being considered for the honorary award of Freeman.
- (17) provide that Members are excluded from scrutiny committees where decisions of a body in which he or she took part are being considered
- (18) enable a member to apply to the Monitoring Officer to obviate the need to register 'sensitive information' (e.g. employment in certain types of scientific research), where it is perceived that there is a serious risk that the Member or a person who lives with him or her, may be subjected to violence or intimidation
- (19) enable a Member not to disclose the details of that 'sensitive information' when declaring an interest in committee, (although there would still be a need to disclose that there is a personal interest)

3.2 More detail and commentary on the above is included at Appendix 1.

4 CONCLUSIONS

- 4.1 The draft revised Code of Conduct appears to be a conscientious attempt to improve the present code and to resolve some of the issues that have arisen with it. However, there are other issues and unresolved problem areas, not covered by the consultation questions, which also require comment.
- 4.2 It is assumed that the new code will be introduced by regulations in April. A meeting of the Standards Committee is scheduled for 12 April, which may enable consideration and a recommendation to be made to the full Council seeking adoption in time for Annual Council in May. However, the timetable is very tight. Also, a training session for all Members is scheduled for 28 March when the proposed changes will be discussed but it is unlikely that the final draft will be available by then.
- 4.3 Members are invited to consider and comment on the contents of the report, the consultation paper and the proposed responses to the questions posed at Appendix 2.

5 PARISH IMPLICATIONS

- 5.1 The consultation documentation has been sent to Parish Councils direct by the DCLG

6 RECOMMENDATION

- 6.1 It is proposed that, subject to Member comments, the Committee **RESOLVES**
- (1) to make a formal response to the consultation on the lines set out, and
 - (2) to note the timetable and potential implications for the Annual Council.

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Background Papers:-

ACSeS “Briefing Note” dated 30 January 2007

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Appendix 1

DETAILED CONSIDERATIONSIntroduction

1. The draft Regulations provide for a single model code for all authorities affected but some provisions are non-mandatory depending on the type of authority. It will therefore be necessary for each authority to adjust the model by deleting the elements not relating to it, prior to adoption, rather than simply adopting the entire code.
2. In recording their decisions the Standards Board for England (SBE) and Adjudication Panel for England (APE) will not be able to refer to paragraph numbers in the model code as they do now, because these will vary according to the nature of the Authority.

Intention

3. The scope of the proposed new code is broadly unchanged. However, the draft seeks to
 - Reflect the recommendations of the SBE following their review of the current code
 - Reflect APE and High Court decisions on interpretation (discrimination, private capacity, disclosure in public interest)
 - Allow a Member to make representations whilst having a prejudicial interest
 - Improve the structure and drafting of the code
 - Be gender neutral
 - Improve some definitions

Relaxations

4. The revised code provides a number of relaxations from the requirements of the current code. In particular it:
 - Modifies the obligation to promote equality and not to unlawfully discriminate. 2(2)(a)
 - Applies an additional limitation to the obligation not to disclose confidential information. This must be reasonable and in public interest, in good faith and not in breach of reasonable requirements. 3((a)(iii) This appears to be designed as a separate test to that under the Freedom of Information Act so that APE can adjudicate on it.

- Removes the obligation to report allegations of failure to comply with the code.
- Modifies the well-being interest to relate only to the Member's ward rather than the whole of the authority's area. 7(c) This dispensation will not assist most parish councillors. It presumably applies to joint committees, but it is not entirely clear how it applies to local authority members on police and fire authorities.
- Limits the obligation to disclose a personal interest of a family member, friend or person having close personal association to those that the Member is aware of, or ought reasonably to be aware of - but does not define what may be reasonable.
- Creates a new category of public service interest as to membership of another relevant authority, public authority or body the Member is appointed to by the authority.
- Makes provision for sensitive interests to be excluded from the public register in very limited circumstances and for the sensitive information not to be disclosed when the interest is disclosed. 8(5) and 13 The phrase 'creates or is likely to create a serious risk of' .. 'violence or intimidation' seems to be too narrow to be of much value. Members may wish to seek a wider effect to this provision.
- Creates a new category of public service interest relating to membership of other relevant authorities, public authorities or bodies the member is appointed to by the authority. 8(7) The interest need only be disclosed when the member addresses the meeting. 8(2) It may seem odd to a member of the public that one member discloses an interest and another not (because s/he did not speak), when both take part in the decision by voting. Does this relaxation have any real value?

A public service interest is not a prejudicial interest except in the limited circumstances of relating to the financial affairs of the body or the determining of any approval, consent, licence, permission or registration. -9(2)(a)(i) and (ii) Monitoring Officers will need to be mindful also as to the possibility of bias in the case of members with public service interests participating in decisions under this general exemption.

A public service interest, for the purposes of the prejudicial interest provisions, is extended to include an interest in a charity, a lobbying or philanthropic body of which the Member is a member. 9(4) The way this is drafted is not ideal and the issue of bias is not addressed.

- Broadens the dispensation relating to housing by excluding the reference to rent arrears. 9(2)(b)(i)

- Creates additional dispensation for indemnities conferred on Members under the Local Government Act 2000 S101. 9(2)(b)(v)
- Creates additional dispensation as to bestowing the title of freeman. 9(2)(b)(vi)
- Creates additional dispensation for setting council tax under Local Government Finance Act 1992. 9(2)(b)(vii) This does not appear to apply to setting precepts.
- Provides for a Member, otherwise having a prejudicial interest, to attend a meeting for the purpose of making representations, answering questions, or giving evidence, provided the meeting agrees and subject to the Member withdrawing after so doing. Although not absolutely clear, presumably a personal interest still needs to be disclosed by the Member. Meetings will require careful managing to ensure such Members are, and are recorded as excluded from the decision making part of the meeting. The wording and meaning is different to the similar provision relating to attendance at scrutiny committees. 10(2)
- Clarifies the provisions on interests at overview and scrutiny committees generally and limits the definition of prejudicial interest to the circumstances of membership of the executive or other committee at the time of the decision and presence of the member when the decision was made.

Additional Obligations

5. The draft code imposes additional obligations on Members:-
- Not to bully any person. 2(b) The new provisions on bullying follow a concern by the SBE at the level of bullying occurring within Councils. The problem of bullying within Parish Councils has been described as endemic and the Society of Local Council Clerks has recently adopted an anti-bullying strategy. Clear guidance will be needed from the SBE, given that the Code does not clearly define bullying, in order to be clear what types of behaviour are acceptable and what are not.
 - Not to intimidate a person involved in proceedings under the Code – 2(c)
 - Extends disrepute to criminal offences committed before taking office but conviction after taking office. 4(2)
 - Extends the “improper influence” provisions to include attempt. 5(a)
 - Extends the meaning of political purposes in the use of the Authority’s resources provision to specifically include ‘party political purposes’.

- Extends the provision on use of the authority's resources to include having regard to the Local Authority Code of Publicity. 5(b)(iii). There is a logic to this otherwise breaches would not be subject to sanction under the ethical framework, but the Code of Publicity, published in 1986, is in need of review.
- Extends obligation to have regard to advice of the Monitoring Officer and Chief Finance Officer to include any relevant advice (not just statutory advice). 6(a) Monitoring Officers and Chief Finance Officers will need to clarify precisely when they are officially giving "advice".
- Imposes a requirement to disclose a gift or hospitality (registered in last five years) as an interest. 7(a)(vi) and 8(3) Gifts and hospitality are to be registered in the Register of Members' Interests register, rather than by separate notification to the Monitoring Officer. In the circumstance of a gift or hospitality amounting to a personal interest, the threshold of £25 seems now to be low. A weakness of this arrangement is that there is no distinction between a bouquet of flowers or meal costing £30 and a holiday costing several hundred pounds, either in respect of the disclosure or the cut-off period of 5 years.
- Extends the well-being interest to a person with whom the member has 'a close personal association'. 7(a)(c) With no definition, is "friend" a different relationship now?

Omissions.

6. The draft Code does not included the ten "General Principles" of Local Government conduct as a preface, presumably because of legal difficulty in drafting, but it would be legitimate for local authorities to do so within their Constitutions, in order to identify the relationship between the General Principles and the Code.
7. The opportunity to bring the application of the Code and the law of bias closer together has not been taken in the draft.
8. Whilst the inclusion of a definition of bias may be difficult to draft to reflect current law, it would be possible to refer to the law of bias in two paragraphs.
 - (a) An additional clause in Para 4(2) could include a finding of bias against a member as conduct amounting to disrepute. Currently, unless bias amounts to disrepute (which is not clear cut), an act of bias by a member that results in a decision being annulled is excluded from the enforcement part of the ethical framework. This would seem to be odd, if not perverse.
 - (b) An additional exception in Para 9(2)(a) to include public service interests that would be prejudicial, on the basis that participation in the matter would amount to bias or apparent bias.

Drafting Issues

10. Whilst the reconstruction of the interests' part of the code (Part 2) helps to improve clarity, it would seem sensible to go further and include all the parts dealing with 'public service interests', 8(2), 8(7)(a)(i), (ii) and (iii), 9(2) and 9(4)(b) in a separate paragraph.. Having different definitions for public service interest in 8(7)(a) and 9(4) is confusing.
11. There are a number of new phrases in the draft Code of Conduct which now require definition:-
 - a. "Close personal association" – Paragraph 7(c)(i) -this clearly extends beyond mere friendship, but how far? Does "personal" in this context mean that it does not include work colleagues? Given that case law was beginning to build up on what constituted a "friend", how useful is this addition?
 - b. "Family" – Paragraph 7(c)(i) - the current Code uses the word "relative" and defines "relative". The new Code uses "family", but fails to define it. Is it the member's household, irrespective of blood relationship? Or is it blood relatives even if living separately? What degree of separation takes an individual outside the scope of "family"?
 - c. "Lobbying Organisation" – Paragraph 9(4)(b) - is it a "lobbying organisation" because it occasionally lobbies, or does it have to lobby Members or Local Authorities, or does it have to spend a specified proportion of its annual expenditure on seeking to influence public opinion?
 - d. "Of a financial nature" – Paragraph 11(2) - what is it that makes an interest "of a financial nature"? Is it that the Member or a friend etc., or an associated body, stands to gain or lose financially in any way, or does the gain have to be primarily financial, or more directly to the Member him or herself?
 - e. "Philanthropic Organisation" – Paragraph 9(4)(b) - Is this the same as "a body directed to charitable purposes", or does "philanthropic" extend beyond the charitable objects in the Charities Act 2006
 - f. "Relates to" – This phrase is used repeatedly throughout the new code, in a number of different contexts and its widespread use may create problems of interpretation for the future
12. The effect of the dispensation in paragraph 8(2) generally is a concern. Members are accustomed to disclosing interests at the beginning of the meeting. There does not seem to be any value gained by changing from disclosure at the beginning whether the Member speaks or not. Curiously, as mention above, in the new draft, if the Member does not speak, there is no requirement to declare the public service interest. It may seem very odd to a member of the public that one Member must disclose an interest and another

not (because s/he did not speak) when both take part in the decision by voting. From an evidential aspect, in a subsequent investigation, the question of whether a Member spoke or not will be more difficult to investigate, than whether the interest was declared or not.

Appendix 2

QUESTIONS RAISED IN THE CONSULTATION DOCUMENT WITH SUGGESTED ANSWERS

Q1. Does the proposed text on the disclosure of confidential information strike 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?

Comment: The proposed amendment incorporates the requirements of Article 10(1) of the European Convention on Human Rights (freedom of expression). In practice it will be extremely difficult for a Member to weigh up the balance of competing interests of preserving confidentiality on the one hand and the restricted number of cases where it would be defensible to disclose that information on the other e.g. to make known the occurrence of a criminal offence.

Response: It will be difficult for a Member to determine when disclosure is “reasonable and in the public interest”, given that this is the same test that local authorities will apply themselves to decide whether or not information should be in the public domain or should remain exempt. Further, it is not clear whether the disclosure must be “reasonable and in the public interest” and “made in good faith”, or whether there is a defence if either of these criteria can be satisfied.

Paragraph 3 also requires clarification so that the proscription applies solely to those areas where the Member received the information in his or her official capacity and not as a private individual or in any other capacity.

Q2. Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the Member, is the proposed text which limits the proscription of activities in a Member’s private capacity to those activities which have already been found to be unlawful by the courts, appropriate?

Comment: This suggests that the code only applies to activities in a Member’s private capacity, which have already been found to be unlawful by the courts. However, the reading of paragraph 4 of the Schedule may be wider than this and, whilst it may include criminal offences, might also include other conduct, which constitutes disrepute.

Response: There is a range of conduct which falls short of conduct capable of founding a criminal conviction e.g. anti-social behaviour. However, by referring to a criminal offence in paragraph 4 it suggests that there is a high threshold of behaviour which could be countenanced before action under this paragraph of the code would be contemplated.

Note: Currently, as a result of the Livingstone Case, the code of conduct in a Member’s private capacity is limited to conduct where it can be established that there is a direct link with the Member’s office. However, the Local Government and Public

Involvement in Health Bill, if enacted, will make it clear that behaviour in a private capacity can be included within the remit of the code.

Q3. Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, eg via guidance issues by local government representative bodies, or should authorities be left to make their own decisions in this area without any 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?

Response: In practice the Publicity Code is a useful tool which assists Local Authorities and Members in addressing sensitive issues at sensitive times e.g. in the run up to elections. However, the provisions of the Publicity Code need to be reviewed.

Q4. Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?

Response: The provisions regarding gifts and hospitality is excessive. In practice most authorities maintain a separate gift and hospitality register, which is not open to public inspection. To translate gifts and hospitality of a value of £25 into interests requiring registration and declaration seems unnecessarily bureaucratic and burdensome. A bunch of flowers, arguably a token of appreciation, can cost £25 nowadays. Furthermore, the requirement for disclosure of such an interest for a period of 5 years after registration is also excessive (not least for Members in remembering that they had received such gifts or hospitality). The £25 should be increased and the period reduced to, say, £50 and 2 years.

There should also be clarification in respect of gifts and hospitality received by the Chairman of the Council in his/her capacity as Civic Head. Most Local Authorities adopt a very sensible approach in that such gifts and hospitality are not declared under the code where they are received as a direct consequence of the office, but it would be preferable if this could be clarified beyond doubt, if not within the code itself, then by express guidance from the Standards Board. In any event most gifts (beyond flowers and chocolates) received by the Chairman are invariably regarded as gifts to the Council not the individual concerned.

Q5. Does 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?

Response: There has been difficulty under the existing Code to determine who constitutes a friend. This will be compounded by the requirement to consider not only friendship but also close personal associations. Very clear guidance will be required from the Standards Board on this, ideally with a clear test which Members will find easy to apply.

Q6. Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?

Response: It would be helpful to include new exceptions to the text and three have been added. Exemptions could be extended usefully in at least two other respects;

1. to expand para. 9 (2)(b)(i) and provide that a Member who is a tenant, lessee or licensee generally would not have a prejudicial interest, save where the debate specifically relates to his or her property. This would cover e.g. allotments and garages and grazing licences which can be problematic in some authorities.

2. to extend para 9(2)(b)(vi) in respect of bestowing the title of Freeman not only on a member, but on a spouse, friend or close associate. In practice the candidates for such an award are likely, by virtue of the service they have provided to the community, to have come into close association with Members.

Q7. Is the proposed text relaxing the rules to allow increased representation at meetings, including where Members attend to make representations, answer questions, or give evidence, appropriate?

Response: Merely because the Member is answering questions or making representations cannot logically affect whether or not he or she has a prejudicial interest within the definition of the phrase in paragraph 9(i). What is required is recognition that, despite the prejudicial interest, the Member is not disbarred from answering questions and making representations. In that respect the Member's position is different from the instances cited in para 9(2)(a) and (b). It would be more accurate to say "notwithstanding their prejudicial interest, a Member may attend a meeting to make representation, answer questions and give evidence".

In practical terms the provision is likely to give rise to the need for very clear procedures to be adopted by the meeting to ensure that the Member does withdraw from the room at a particular point. It would be useful to clarify that withdrawal should have taken place prior to a decision being reached. It is not clear whether the Member may stay for the debate.

Q8. Is there a better, more user-friendly way of ensuring the text is gender-neutral, for example, would consultees consider that amending the wording to say 'you' instead of 'he or she' or 'him or her' would result in a clearer and more accessible code for Members?

Response: The draft code is written in language that is intended to be user friendly. It is clearer and more understandable although the lack of definitions creates ambiguity in many places.

Achieving gender neutral language is ideal, but the proposal to refer to the second person ("you") is likely to cause ambiguity. 'He/she', 'his/her' could simply be replaced by 'a/the Member' 'a/the Member's'.