

## **CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES – A CONSULTATION**

### **1 SUMMARY**

- 1.1 This report deals with a Government consultation seeking views on 21 specific issues relating to amendments to the Code of Conduct for Members and the introduction of a Code of Conduct for Employees. A response is sought by 24 December 2008, with a view to implementation in time for the 2009 local elections.

### **2 INTRODUCTION**

- 2.1 The Department for Communities and Local Government (DCLG) has issued a series of consultation documents following publication of the White Paper, 'Communities in Control: Real People, Real Power'. This report sets out a suggested response to the specific questions posed by DCLG in connection with the consultation on Codes of Conduct for Members and Employees and is attached at Appendix 1.
- 2.2 The consultation document has been circulated to all Members of the Standards Committee under separate cover. A copy has been placed in the Members' Library and is also available on the DCLG website.

### **3 THE NATURE OF THE CONSULTATION**

#### **The Members' Code of Conduct**

- 3.1 DCLG is consulting on specific questions around the Members' Code rather than proposed amendments to the text. The questions are limited and there are likely to be further issues that need to be addressed in relation to both Codes.
- 3.2 Following similar consultation in 2007 on revisions to the Code and the implementation of local initial assessment of standards complaints, the final regulations varied substantially from the consultation drafts and contained a number of new matters on which no consultation had taken place. In the same way, DCLG may receive a considerable number of other suggestions and these could be incorporated into either Code with very little further consultation given the timetable for implementation by June 2009.

#### **Employees' Code of Conduct**

- 3.3 In November 2004 the Standards Committee considered a consultation by the then Office of the Deputy Prime Minister on a new model Code of Conduct for Local Government employees. The Committee broadly accepted the model, subject to some minor amendments and responded to the consultation accordingly.

- 3.4 In December 2005, the Office of the Deputy Prime Minister published a paper on the future of the conduct regime for local government in England. The paper confirmed the Government's intention to proceed with a statutory code for employees but offered no firm indication of when this was likely to take place.
- 3.5 The 2004 consultation was more comprehensive and listed 16 questions as against the ten posed in the current consultation. It is not clear whether the results of the earlier consultation have been taken into account and, as with the proposed revisions to the Members' Code, other issues might arise that will allow little or no time for further consultation.
- 3.6 With the above in mind, Members are invited to consider the draft response set out at Appendix 1.

#### **4 PARISH IMPLICATIONS**

- 4.1 Parish Councillors are affected by the proposed amendments to the Code of Conduct for Members and Parish Clerks may be affected by proposals for an Employees' Code.

#### **5 RECOMMENDATION**

- 5.1 It is proposed that the Committee **RESOLVES**

To respond to the consultation on the basis set out at Appendix 1 subject to Members' comments

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#### **Background Papers:-**

None

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## APPENDIX 1

## CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND OFFICERS

## A RESPONSE TO CONSULTATION

**1 CODE OF CONDUCT FOR MEMBERS****1.1 Q1 – Do you agree that the Members' Code should apply to a Member's conduct when acting in their non-official capacity?**

This Council agrees that the public has a right to expect high standards of conduct from their elected and co-opted Members and that some instances of misconduct in private life can reflect upon a Member's suitability to continue as a Member. It may also have an adverse affect on the level of public trust in local authority Members and local government as a whole.

The Code of Conduct for Members should apply to at least some conduct in a Member's private life.

**1.2 Q2 – Do you agree with the definition of 'criminal offence' for the purpose of the Members' Code? If not, what other definition would you support? Please give details.**

There are difficulties in linking behaviour in a personal capacity to behaviour constituting a criminal offence. In some instances, behaviour which does not amount to a criminal offence may be as reprehensible as behaviour that does. Equally, many minor criminal offences will have little adverse effect on public trust. It is therefore questionable whether the Code's application to private life should be limited to criminal conduct.

CLG's intention is to limit the application of the Code to more serious offences by excluding criminal offences that result in fixed penalty notices. However, a fixed penalty notice is sometimes available for relatively minor instances of what can be a serious offence, for example unauthorised tipping of waste materials. Failure by a Member to comply with a regulatory regime which that Member is responsible for enforcing would reflect very seriously on the credibility of that Member, of the authority and of the regulatory regime itself.

The Code of Conduct should be capable of responding appropriately to such cases and it should be left to the Standards Committee (Assessment Sub-Committee) to resolve such matters. Accordingly, if the Code is to include reference to criminal offences this should include all criminal offences, whether they result in actual prosecution or merely a fixed penalty notice.

- 1.3 **Q3 – Do you agree with this definition of ‘official capacity’ for the purposes of the Members’ Code? If not, what other definition would you support? Please give details.**

The definition of ‘official capacity’ appears to be adequate.

- 1.4 **Q4 – Do you agree that the Members’ code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?**

The basic proposition is acceptable, but the Consultation Paper goes on to provide that the Code would only apply if the Member was convicted in the country in which the offence was committed. No explanation for this is provided. There are numerous examples where crimes committed in one country are prosecuted in another. For example, the UK law of corruption has recently been extended to include corruption overseas but triable in the UK and clearly such a criminal conviction should be within the scope of the Code as it reflects directly on the suitability of the Member to continue to act as a member of a local authority. Accordingly, this Council does not support the proposal that the conviction must arise in the same country as the offence was committed.

- 1.5 **Q5 – Do you agree that an ethical investigation should not proceed until the criminal process has been completed?**

Although as a general principle the proposition sounds reasonable, there are a number of aspects to be considered. First, should the breach of the Code arise when the criminal conduct occurs, or only when a conviction has resulted? Second, should the actual investigation be held over until there is a conviction for the criminal offence? Third, should actual conviction before a criminal court be the only admissible evidence of criminal conduct?

1. There are likely to be times when the nature of the offence or length of time taken to complete a trial are such that it would risk bringing the process into disrepute if no complaint can even be entered until long after the event. Accordingly, there should not be any limit on making a complaint before conviction.

2. While it would be wrong to encourage a standards investigation which interfered with a criminal investigation, if there is a long gap between the event and a conviction, it discredits the standards system if no action can be taken, especially where the breach of the Code is self-evident or the Member has admitted guilt. Accordingly, there should be no bar on standards investigations and proceedings in advance of conviction.

3. If a complaint is to be admissible before conviction, it follows that conviction cannot be the only admissible evidence of the criminal offence. Standards proceedings are civil proceedings. They determine matters on the

balance of the evidence before them. An actual conviction in a criminal court is the most cogent evidence of guilt, but it is not a comprehensive test and not all criminal offences result in prosecution. Accordingly, evidence of criminal conduct other than a conviction should be admissible as evidence of breach of the Code. Otherwise much of the force of this provision will be lost and complaints will be seriously delayed, discrediting the process.

On balance therefore, it should be permissible for ethical investigations to proceed outside of the criminal process.

**1.6 Q6 – Do you think that the amendments to the Members’ Code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?**

Paragraph 12(2)

Paragraph 12(2) presents a useful opportunity for a Member with a prejudicial interest to make representations as a member of the public but not take part in the decision itself. The provision is mandatory for most authorities but only applies to Parish Councils if positively adopted. It would be sensible to make this mandatory for Parish Councils.

Registration of Gifts and Hospitality

There is a drafting issue in that Paragraph 8(1)(a)(vii) requiring registration of any gift or hospitality with an estimated value of at least £25, if taken literally, requires the Member to register ‘the interests of’ the donor or hospitality provider. What is actually required is the identity of the person from whom the gift or hospitality is received and its estimated value and this should be clarified.

In addition, this Council believes that the sum of £25 should be raised to a level such as £100 so that Members only have to declare and register significant gifts and hospitality that are such that they might possibly influence the Member’s decision on a matter.

Prejudicial Interests

Paragraph 10(2) could usefully be re-drafted to avoid the current double-negative and to clarify when the determination of an approval, consent, licence, permission is ‘in relation to’ the Member, for example by changing this part to say ‘determination of an application for approval..... made by you or on your behalf’.

Registration of Interests

It is proposed that existing registrations of interests should carry forward when the revised Code is introduced. However, it would be better to give each Member a copy of their existing register entries in May each year and ask them to ensure that they are up to date.

#### Application of the Code to suspended Members

The majority of the Code as currently drafted does not apply to a Member when he/she is suspended. A Member could behave particularly badly while suspended without any sanction against them. Paragraph 2(2) should be amended to provide that a Member's conduct in relation to his/her authority shall be treated as being in an official capacity notwithstanding that the Member was suspended at the time of the conduct.

#### Disclosure and misuse of confidential information in private life

The disclosure of confidential information which a Member has obtained through their connection with the authority, or its use for personal advantage, in private life, could be an example of serious misconduct akin to insider trading but at present is not covered by the Code. The Council supports proposals to amend legislation to provide that such conduct can constitute a breach of the Code even where the conduct occurs in private life and does not amount to a criminal offence.

#### Close Association

The phrase 'person with whom you have a close association' is vague. Whether in the Code or in supporting Guidance it is necessary to make it clear that this provision only covers people with whom the Member has such a close continuing relationship that a member of the public might reasonably conclude that it is likely to influence the Member's perception of the public interest on matters that affect that individual.

- 1.7 **Q7 – Are there any aspects of conduct currently included in the Members' Code of Conduct that are not required? If so, please could you specify which aspects and the reasons why you hold this view?**

#### Overview and Scrutiny Committees

Paragraph 11 provides that a Member of the authority's executive will have a prejudicial interest in the matter when he/she is interviewed by the authority's Scrutiny Committee in respect of an executive decision that he/she has made. The Standards Board for England's advice has been that the power of the Scrutiny Committee to require the attendance of the Member overrides the Code, but there is no clear basis for this assertion. On the plain words of the Code, in the absence of any exception in the legislation, it would appear that the executive Member is required to attend, but then has a prejudicial interest and is in breach of the Code of Conduct if he/she remains in the meeting.

Accordingly, the exception in Paragraph 12(2) should be extended to provide that attendance to give evidence at the request of the Scrutiny Committee should not be a breach of the Code of Conduct.

- 1.8 **Q8 – Are there any aspects of conduct in a Member's official capacity not specified in the Members' Code of Conduct that should be included? Please give details.**

Application to informal meetings, site visits and correspondence

The definition of 'meetings' in Paragraph 1(4) is currently very limited. It is reported that there has been public concern at the possible undue influence applied by Members in informal meetings and correspondence, for which there is no public access. The Welsh Code for Members has addressed this by extending the definition of 'meetings' to include 'informal meetings between a Member and one or more other Members or officers of the authority, other than group meetings', and by requiring Members to disclose that they are Members in any correspondence with the authority, even if that correspondence is in a private capacity. This makes the position absolutely clear. It can readily be checked by inspection of correspondence and disclosure of officers' notes of meetings as background papers when formal decisions come to be taken.

Application to Ward Councillor Decision-Making

Section 236 of the Local Government and Public Involvement in Health Act 2007 enables local authorities to arrange for the discharge of functions by a Ward Councillor within their ward. It makes no provision for the application of the Members' Code to such discharge of functions. The normal rules on disclosure of personal and prejudicial interests do not apply in this case as there is no 'meeting', yet the potential for conflicts of interest are greatly increased. It would be appropriate to apply Paragraphs 9(6) and 12(1)(b) and (c) to any decision-making by a Ward Councillor under Section 236, and require the recording of any personal interest in the record of that decision.

- 1.9 **Q9 – Does the proposed timescale of two months, during which a member must give an undertaking to observe the Members' Code of Conduct, starting from the date on which the authority adopts the Code, provide members with sufficient time to undertake to observe the Code?**

The two month period for such undertakings was applied in 2001, when the Code of Conduct was first adopted by each authority and is reasonable.

- 1.10 **Q10 – Do you agree with the addition of a new General Principle, applied specifically to conduct in a Member's non-official capacity, to the effect that a Member should not engage in conduct which constitutes a criminal offence?**

The General Principles are supposed to be the enduring principles which underlie the Code. As such they should not be changed unless there are overriding reasons for doing so. The core principle is already substantially covered by General Principles 2 (Honesty and Integrity) and 8 (Duty to uphold the Law). Accordingly, a new General Principle is unnecessary.

**1.11 Do you agree with the broad definition of ‘criminal offence’ for the purpose of the General Principles Order? Or do you consider that criminal offence should be defined differently?**

As set out above, the Council does not consider that it is necessary or helpful to change the General Principles for this purpose.

**1.12 Do you agree with this definition of ‘official capacity’ for the purpose of the General Principles Order?**

Whilst there is no need for a new General Principle, if implemented as suggested, it would mean that the General Principles were narrower than the Code of Conduct that is supposed to give effect to them. Accordingly, the new General Principle, if adopted, should apply to criminal conduct ‘which compromises the reputation of the member’s office or authority, or their ability to perform their functions as a Member’.

**2 CODE OF CONDUCT FOR EMPLOYEES**

**2.1 Q13 – Do you agree that a mandatory code of conduct for local government employees, which would be incorporated into employees’ terms and conditions of employment, is needed?**

This question is disingenuous since the principle that there should be such a Code is enshrined in the Local Government Act 2000.

However, a Code of Conduct going beyond the normal provisions of standard terms and conditions of employment in public service is useful at least for senior officers and it is sensible to incorporate it in contracts of employment by operation of law.

**2.2 Q14 – Should we apply the Employees’ Code to fire-fighters, teachers, community support officers and solicitors?**

Where an employee is subject to a Code of Conduct which is a precondition of the employee performing the functions of the post, for example, a solicitor must comply with the Solicitors’ Code of Conduct 2007, it may be appropriate to provide that the Employees’ Code of Conduct shall not apply in so far as it is incompatible with that other code.

**2.3 Q15 – Are there any other categories of employee in respect of whom it is not necessary to apply the Code?**



In general terms, if relevant employees are excused provisions of the Code that are incompatible with professional codes, there is no need to exclude specific categories of employee from the Code.

2.4 **Q16 – Does the employees’ code for all employees reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?**

Application to private life

As drafted, the Employees’ Code applies in an employee’s private life, prohibiting an employee from having personal interests which conflict with their professional duties, requiring political neutrality even in private life, and requiring the disclosure of personal information to the employer, and perhaps to the general public. Following the determination that the provisions of the Local Government Act 2000 in respect of the Members’ Code did not apply in a Member’s private life in the absence of an express statement to that effect in the legislation, it seems unlikely that the Local Government Act 2000 provides a sufficient basis for an Employees’ Code to apply to employees’ private life.

Political neutrality

On the basis that additional rules will apply to all politically restricted post-holders, the second sentence of the provision on political neutrality (which applies only to officers who hold politically restricted posts) is redundant in the core rules and should be deleted.

Relations with members, the public and other employees

Whilst it is desirable for employees to deal sympathetically with Members and others, it is unreasonable to suggest that employees should always have sympathy with those persons with whom they have to deal in the course of their employment. A requirement similar to the Members’ Code to treat others with respect is much more appropriate.

Equality

The entirety of this provision is simply a duplication of the requirements to act lawfully and within the policies of the authority, and so should be deleted.

Stewardship

The rest of the Employees’ Code refers to ‘employees’. This provision refers to ‘employees of relevant authorities’. Consistent language should be used throughout the Code.

### Personal interests

The requirement not to allow personal interests and beliefs to conflict with professional duties is not matched in the Members' Code of Conduct.

The phrase 'personal interests' is here used in a very different manner from the use of the same phrase in the Members' Code. This will cause confusion and should be avoided.

### Gifts and hospitality

The Employees' Code should make it clear that it only applies to gifts and hospitality that the employee receives by reason of their employment.

### Whistle-blowing

A duty to report illegality or failure to comply with the policies of the authority is reasonable, but the requirement to report breaches in respect of the model Employees' Code is at odds with recent amendments in respect of the Members' Code and is not supported.

### Investigations by the Monitoring Officer

Whilst Monitoring Officer investigations are important, it is equally important to secure the employee's co-operation with any statutory investigation, including the authority's external auditors and the Police.

**2.5 Q17 – Should the selection of 'qualifying employees' be made on the basis of a political restriction style model or should qualifying employees be selected using the delegation model?**

With the exception of the three statutory officers, the Head of Paid Service, Chief Finance Officer and Monitoring Officer, all local authority employees act under powers delegated to them by the authority. Therefore, the delegation model would not work and the most convenient option is to use political restriction.

**2.6 Q18 – Should the code contain a requirement for qualifying employees to publicly register any interests?**

It is appropriate that senior employees should be required to register outside interests. However, as well as Human Rights and Data Protection issues, the JNC terms and conditions of employment currently prohibit the employing authority from disclosing personal information about an employee without his/her consent. On that basis, the register of employees' outside interests should not be open to public inspection.

Further, in the absence of express legislative provision, Members would not have any automatic right of access to the register, but might make a specific enquiry in respect of a named officer where they were able to demonstrate that they had a real need to know that information in order to discharge their functions as a Member. Otherwise access will be limited to named employees in respect only of those employees for whom they have direct responsibility.

If the right of access to the register of employees' interests is limited as suggested above, there is no need for a category of 'sensitive information' to be disclosed but then omitted from the register.

**2.7 Q19 – Do the criteria of what should be registered contain any categories which should be omitted, or omit any categories which should be included?**

Other employment or business, membership of pressure groups and the receipt of gifts and hospitality by reason of employment should be included in the list of registerable interests.

**2.8 Q20 – Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the Members' code? Have any been omitted?**

Regard should be had to the provisions of Section 117 of the Local Government Act 1972 requiring disclosure by officers of pecuniary interests. To avoid confusion the Employees' Code should require notification of any 'personal interest', defining 'personal interest' to include matters that must be disclosed under Section 117, and in the process removing the current difficulty caused by the repeal of the definition of 'pecuniary interest' by the Local Government Act 2000.

Also, because the draft Employees' Code is written in very different and less precise language by comparison with the Members' Code, it is not possible to do a line-by-line comparison of both codes and their impact. However, the suggestion that officers with a prejudicial interest should 'wherever possible ... take steps to avoid influential involvement in the matter' is at odds with the strict prohibition on Member participation in a matter in which they have a prejudicial interest.

**2.9 Q21 – Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?**

The paragraph titled 'Considering advice provided to you and giving reasons' is unnecessary. The text is inconsistent with the title and it is for the individual to decide whether to have regard to such advice or to risk the penalties which may flow from ignoring it.

The requirement to register interests with the authority's Monitoring Officer should require registration with 'the Monitoring Officer or such other officer as he/she may designate for this purpose'.

2.10 **Q22 – Should the employees' code extend to employees of parish councils?**

Given the wide variation in size of parish and town councils, the Employees' Code should be discretionary rather than mandatory for parish councils.

2.11 **Should authorities be required to incorporate the exact words of the employees' code into contracts of employment?**

No. It may be preferable to have a standard document incorporated as part of the terms and conditions of employment but authorities wishing to prepare their own forms of contract of employment should be required to include provisions of no less effect than the Employees' Code, rather than necessarily the exact words of the Code.