
CODE FOR THE FUTURE – STANDARDS BOARD FOR ENGLAND CONSULTATION

1 SUMMARY

- 1.1 This report seeks members' views on a consultation document from the Standards Board for England entitled "A Code for the future".

2 INTRODUCTION

- 2.1 The Code of Conduct was introduced in November 2001 and came into force for all authorities in May 2002. Following three years' experience of working with the Code, the Standards Board for England announced their intention to commence a consultation to review the Members' Code of Conduct at the third annual assembly of Standards Committees in Birmingham last September. In his speech to the Assembly the Rt Hon Nick Raynsford MP stressed that the Government did not want to dilute the basic underlying principles of the Code of Conduct but rather seek to discover what may be learned from practical experience of working with it.
- 2.2 The Standards Board have identified a number of key areas for review and distilled these into 29 questions. The deadline for responses to the consultation is 17th June 2005. Following the consultation, the Standards Board will make a number of recommendations to the Office of the Deputy Prime Minister with a view to changes to the Code being agreed by the end of 2005. The Standards Board intends to publish a summary of the responses received.
- 2.4 It is understood that further consideration will be given to the 10th Report of the Committee on Standards in Public Life and to the outcome of the House of Commons Select Committee Inquiry into the Role and Effectiveness of the Standards Board for England as part of this consultation exercise.

3 THE CONSULTATION

- 3.1 The purpose of the consultation is to review the effectiveness of the Code of Conduct and whether it can be simplified, clarified and improved. The Standards Board has indicated that it would also welcome opinions on sections of the Code not covered by the consultation questions and any other issues that are felt to be important.
- 3.2 The questions proposed by the Standards Board are set out in a leaflet and copied as Appendix 1 to this report. For ease of presentation, suggested responses have been drafted sequentially for Members consideration. There may also be other issues that Members wish to express views on.

- 3.3 This report recommends a response for Rochford District Council's Standards Committee. However, individual Members are invited to make their own representations should they so wish. Details of how to respond are included in the appended leaflet.

4 QUESTIONS PROPOSED BY THE STANDARDS BOARD FOR ENGLAND

4.1 The General Principles

Question 1 – Should the ten General Principles be incorporated as a preamble to the Code of Conduct?

Question 2 – Are there any other principles which should be included in the Code of Conduct?

Comment – the Code of Conduct is founded on ten general principles set out in the Relevant Authorities (General Principles) Order 2001 derived from recommendations by the Committee on Standards in Public Life. The ten general principles underpin the provisions of the Code of Conduct and are fundamental to its interpretation. The Local Government Act 2000 requires the Code of Conduct to be consistent with the general principles but it does not currently incorporate them. The principles are:-
Selflessness, honesty and integrity, objectivity, accountability, openness, personal judgement, respect for others, duty to uphold the law, stewardship and leadership.

Suggested Response – the General Principles set a context for the Code and it would be appropriate for them to be incorporated within it. They are wide ranging and there is no requirement for the addition of further principles.

4.2 Disrespect and Freedom of Speech

Question 3 – Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?

Question 4 – Should the Code of Conduct include specific provision on bullying? If so, is the ACAS definition of bullying quoted in the full consultation paper appropriate for this?

Summary – Paragraph 2 (b) of the Code of Conduct states that a Member must treat others with respect. This applies to Members when they are carrying out the duties of the office to which they have been elected or appointed or when representing their authority in their official capacity. The Standards Board has received a number of complaints alleging bullying. The Code of Conduct does not contain a specific provision to address bullying. To date, the Standards Board has dealt with complaints alleging bullying under paragraphs 2(b), 2(c) and 4 of the Code. This covers the need to treat people with respect, not to seek to compromise impartiality and not to bring the Authority into disrepute.

Suggested response – Practical experience of interpretation of the Code would help clarify interpretation of “respect” and the context of its use. At the present time, it could be overly prescriptive to have a more defined statement.

The proposal to incorporate a definition of bullying into a revised Code would send a clear message that behaviour of this nature will not be tolerated.

4.3 Confidential Information

Question 5 – Should the Code of Conduct contain an explicit public interest defence for Members who believed they have acted in the public interest by disclosing confidential information?

Question 6 – Do you think the Code of Conduct should cover only information which is in law “exempt” or “confidential”, to make it clear that it would not be a breach to disclose any information that an authority had withheld unlawfully?

Summary – Paragraph 3(a) prohibits Members from disclosing information given to them in confidence or that is acquired and which the Member believes to be of a confidential nature.

Suggested response – in the light of the Freedom of Information Act 2000, it would seem appropriate to provide a public interest defence and for the Code to cover only information which in law is exempt or confidential.

4.4 Disrepute and private conduct

Question 7 – Should the provision relating to disrepute be limited to activities undertaken in a Members’ official capacity or should it continue to apply to certain activities in a Members’ private life?

Question 8 – If the latter, should it continue to be a broad provision, or would you restrict it solely to criminal convictions and situations where criminal conduct has been acknowledged?

Summary – paragraph 4 of the Code of Conduct states that, ‘A Member must not in his official capacity, or in any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or Authority into disrepute’. This provision applies to Members both when on Council business and in their private lives.

Suggested response – the Report of the Committee on Standards in Public Life’s Tenth Inquiry recommends that the Code of Conduct should not cover matters that are wholly unrelated to an individual’s official capacity. Members’ private conduct should only be of concern if it is likely to compromise the reputation of the authority.

The general principles require Members to uphold the law and to act in accordance with the trust that the public is entitled to place in them. Cases of unlawful behaviour that result in criminal convictions and police cautions may undermine the public's confidence in the Members ability or fitness to carry out their official duties. However, there should be a distinction between convictions and criminal conduct that has been acknowledged and cases where an offence has not been proven.

4.5 Misuse of Resources

Question 9 – We believe that the Code should prohibit breaches of the publicity code, breaches of any local protocols and misuse of resources for inappropriate political purposes. Do you agree?

Question 10 – If so, how could we define inappropriate political purposes?

Question 11 – Is the Code of Conduct right not to distinguish between physical and electronic resources?

Summary – the Code provides that Members must not bring the authority into disrepute and must act in accordance with the authority's requirements when using the authority's resources. They must also ensure that the resources are not used for political purposes other than those necessary for carrying out the duties of their office.

Suggested Response – the Code appears to cover breaches statutory codes and local protocols. However, in the interests of clarity and consistency, reference in the Code to the restrictions under the Local Government Act 1986 and the Code of Recommended Practice on Local Authority Publicity and to the misuse of resources for inappropriate political purposes might be useful.

It is not necessary to distinguish between physical and electronic resources because all resources should be treated similarly. A breach of the Code would occur when there has been a breach of the Authority's own rules in that respect.

4.6 Duty to Report Breaches

Question 12 – Should the provision of the Code of Conduct that requires Members to report breaches of the Code by fellow Members be retained in full, removed altogether, or somehow narrowed?

Question 13 – If you believe the provision should be narrowed, how would you define it? For example should it apply only to misconduct in a Members' public capacity, or only to significant breaches of the Code?

Question 14 – Should there be a further provision about making false, malicious or politically motivated allegations?

Question 15 – Does the Code of Conduct need to provide effective protection for complainants against intimidation, or do existing sections of the Code of Conduct and other current legislation already cover this area adequately?

Summary – The Code of Conduct requires Members who have a reasonable belief that a fellow Member has breached the Code of Conduct to make a complaint to the Standards Board. This requirement has resulted in complaints being made which might otherwise not have been reported. However, the Board has also received a number of complaints that it believes were politically motivated and malicious, rather than reflecting legitimate concerns about potential breaches of the Code.

Suggested Response – The provisions of the Code should be narrowed. It is in the public interest that misconduct and corruption are reported. However, the Code should acknowledge that some breaches are more serious or significant than others. It should be a requirement for members to report only serious breaches while ensuring this does not deter complaints of legitimate concern even if subsequent investigation finds those concerns to be unfounded.

In terms of protection for whistleblowers, if a Member does seek to intimidate a complainant these matters can be dealt with under the existing Code by provisions such as those relating to disrepute and disrespect.

4.7 Personal Interests

Question 16 – Do you think the term “friend” requires further definition in the Code of Conduct?

Question 17 – Should the personal interest test be narrowed so that Members do not have to declare interests shared by a substantial number of other inhabitants in an authorities area?

Question 18 – Should a new category of “public service interest” be created, relating to service on other public bodies and which is subject to different rules of conduct?

Question 19 – If so, do you think public service interests which are not prejudicial and which appear in the public register of interests should have to be declared at meetings?

Question 20 – Do you think paragraph 10(2)(a-c), which provides limited exemption from the prejudicial interest rules for some Members in certain circumstances, should be removed from the Code of Conduct?

Question 21 – Do you think less stringent rules should apply to prejudicial interests that arise through public service and membership of charities and lobby groups?

Summary – Paragraph 8 of the Code of Conduct requires Members with a personal interest in a matter to disclose the existence and nature of that interest at the start of a meeting or when the interest becomes apparent. The existence of a personal interest does not of itself prevent a Member from remaining in the meeting and voting. A personal interest may arise not only from the business interests, employment and shareholdings of the Member above a certain threshold but also the impact of any matter on their wellbeing and that of their relatives, friends and any employers.

Members are not required to leave the meeting and refrain from voting unless their interest is also prejudicial. There are certain prejudicial interests that the Code allows to be redefined as personal in specific circumstances. Under Paragraph 10(2)(a-c) these relate to holding particular offices in certain other bodies. The Standards Board suggest that the prevalence of Member involvement with public bodies is such that the current requirements of the Code place an onerous and ongoing responsibility on Members to declare their membership of other public bodies, particularly as many interests that arise from service on other public bodies will not be significant.

Suggested response – a definition of the terms “friend” and “wellbeing” in guidance issued by the Standards Board would be useful. However, it is not necessary for the Code itself to contain an interpretation of the meaning of these terms.

It would be more practical if Members were not required to declare interests obviously shared by a substantial number of other inhabitants in an Authority’s area.

The introduction of a new category of “public service interest” could prove useful and should not need to be declared other than in the Register of Interests unless a specific prejudicial interest arises from it.

If the definition of “public service interest” includes those bodies referred to in paragraph 10(2)(a-c) then this section could be removed from the Code. Less stringent prejudicial interests could apply to such bodies and to charities and lobby groups but this would have to be unambiguously defined and should not extend to personal interests beyond membership of the body that are prejudicial.

4.8 Prejudicial Interests

Question 22 – Should Members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?

Question 23 – Do you think Members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?

Summary - For an interest to be prejudicial, it must be likely to prejudice the Members judgement, being likely to harm or impair the Members ability to judge the public interest. Members who have a prejudicial interest in a matter to be discussed must declare the nature and existence of the interest, leave the room and not be involved in nor seek to influence the decision.

Suggested response – If Members with a prejudicial interest were able to address a meeting or to remain during the vote they would be in a position to exercise influence and the transparency of decision making would be lost. A Member with a prejudicial interest should not participate in a meeting.

4.9 Registration of Interests

Question 24 – Should Members employed in areas of sensitive employment, such as the security services, need to declare their occupation in the public register of interests?

Question 25 – Should Members be required to register membership of private clubs and organisations? And if so, should it be limited to organisations within or near an authority's area?

Summary – The Code requires Members to include in the Register of Members' interests information about their employment and employer, including their personal and business address details. Issues around public access to this information have arisen where Members are employed in areas of sensitive employment, such as certain scientific research and the Special Armed Forces. Public access to information about Members employment, may, given the security issues surrounding these areas of work, threaten the security and/or safety of the Member and their family.

Suggested response – The inclusion of an extra provision in the Code to provide Members with a dispensation from publicly registering sensitive information about their employment is welcomed. Such information should be provided to the Monitoring Officer but not made available to the public.

In respect of a requirement to register membership of private clubs and organisations, there should be a requirement to register membership of private clubs and organisations but only within the authority's area.

4.10 Gifts and Hospitality

Question 26 – Should the Code of Conduct require that the Register of Gifts and Hospitality be made publicly available?

Question 27 – Should Members also need to declare offers of gifts and hospitality that are declined?

Question 28 – Should Members need to declare a series of gifts from the same source, even if these gifts do not individually meet the threshold for declaration? How could we define this?

Question 29 – Is £25 an appropriate threshold for the declaration of gifts and hospitality?

Summary – A Member has to declare only those gifts or hospitality received in his or her capacity as a Member over the value of £25.

Suggested Response – The Code should continue to require the register of gifts and hospitality to be made publicly available. It should not be necessary to declare offers of gifts and hospitality that have been declined. It would be onerous and difficult for the Monitoring Officer to maintain a comprehensive record of gifts from the same source over a period of time with a cumulative value of over £25. However, the Standards Board might consider guidance about voluntary declarations of such gifts. The requirement under the Code should be to register one off gifts only. A £25 threshold remains appropriate.

5 PARISH IMPLICATIONS

- 5.1 Parish Members have an equivalent Code and Parish Councils may wish to make their own representations on the consultation.

6 RECOMMENDATION

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

To determine its response to the consultation from the Standards Board for England entitled “A Code for the future”.

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Background Papers:-

None

For further information please contact John Honey on:-

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