

Report of the Assistant Director Corporate Services (City Solicitor) to the meeting of Standards Committee to be held on 4 December 2008.

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Subject:

Proposals to Introduce a National Code of Conduct for Local Government Employees.

Summary statement:

This reports sets out the issues raised in the consultation document "Communities in Control; Real People, Real Power Codes of Conduct for Local Authority Members and Employees – A Consultation" specifically in relation to the proposals to introduce a National Code of Conduct for Local Government Employees.

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Improvement Area:



2006-2007
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INVESTOR IN PEOPLE

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1. Summary

- 1.1 This reports sets out the issues raised in the consultation document “Communities in Control; Real People, Real Power Codes of Conduct for Local Authority Members and Employees – A Consultation” specifically in relation to proposals to introduce a National Code of Conduct for Local Government Employees.

2. Background

- 2.1 In August 2004 the Government issued a consultation paper, “A Model Code of Conduct for Local Government Employees”. The paper consulted on a draft code defining the minimum standards of conduct that employees of Authorities would be expected to observe in carrying out their duties.
- 2.2 The Government restated its commitment to introduce a Model Employees Code under Section 82 of the Local Government Act 2000 in the Local Government White Paper 2006. However the implementation of a code for Employees was delayed to enable the Government to have an opportunity to consider the proposed Code in the context of the wider review of the conduct regime for Local Government and the lessons learned from the implementation of the new Members Code. The consultation paper now published seeks further views on the proposals to introduce a model Employees code.
- 2.3 A copy of the full consultation document has been circulated to Members of the Standards Committee and is available at www.communities.gov.uk. The consultation document also deals with proposals to Code of Conduct for Elected Members. These proposals are dealt with in a separate report to this committee.
- 2.4 The consultation takes the format of a series of questions. Questions 1 to 12 relate to the proposed amendments to the Code of Conduct for Local Authority Members and questions 13 to 22 deal with the proposed Model Code of Conduct for Local Authority employees.
- 2.5 Appendix A has reproduced questions 13 to 22 with a commentary for consideration by Members of the Standards Committee.
- 2.6 The Government department advice is that within 3 months of the close of the consultation period (24 December 2008) they will analyse the responses and produce a summary of them. This summary will be published on the Department’s web site at www.communities.gov.uk.

3. Options

- 3.1 Members are asked to consider the questions in the Appendix and the commentary and agree how they would wish to respond to each question.
- 3.2 Members are asked to consider whether they wish to include an item on the Forward Plan to consider the published response to the consultation.

4. Financial and resource appraisal

4.1 There are no financial implications in terms of this report.

5. Legal appraisal

5.1 The consultation will inform the Government department in terms of the legislative changes which may be required to implement the amendments to the Code of Conduct.

6. Recommendations

6.1 That the Standards Committee considers the consultation paper and the questions and agrees a response.

6.2 Reason for that recommendation
To ensure the Standards Committee is fully engaged in the proposals to introduce a National Code of Conduct for Local Government Employees.

6.3 That Standards Committee considers what further actions it wishes to include in the work programme arising out of this consultation.

6.4 Reason for that recommendation
To ensure Standards Committee fully understands the proposals to introduce a National Code of Conduct for Local Government Employees.

10. Appendices

Appendix A – Code of Conduct for Local Government Employees – Questions posed by Consultation Document.

Appendix A
Code of Conduct for Employees - Questions posed by Consultation Document.

Question 13

Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

Commentary

The Audit Commission have for some time expressed a view that Employees should be subject to a Code of Conduct. The question which is dealt with below is whether it ought to be applicable to all employees or just a defined Group.

Question 14

Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

Commentary

The examples given are professions that are already covered by their own Code of Conduct. However it should be noted that professional Codes of Conduct are designed to protect the reputation of the profession not necessarily the Local Government Employer. To that extent they may differ, for example the Solicitors Code of Conduct makes no requirement for registration of outside interests or notification of Gifts and Hospitality. Members may therefore think it appropriate to provide that where an employee is subject to a Code of Conduct the Employees Code of Conduct should not apply in so far as it is incompatible with that other Code.

Question 15

Are there any other categories of employee in respect of whom it is not necessary to apply the code?

Commentary

Members may consider their response to this should be considered in the context of whether the Code should apply to all employees or whether to a specified group based on salary and/or seniority and/or political restriction.

Question 16

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?

Commentary

The proposals suggest a two tier model. The first tier will apply equally to all authority employees and will enshrine the core values that it is expected every authority employee would abide by. The second tier draws on the Members Code " and applies to qualifying employees" which will include senior officials or those officials carrying out delegated functions. However it is noted that some of the drafting of the Employees Code would effectively apply to an employees private life, for example prohibiting an employee from

having a personal interest which conflicts 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. Members may consider whether this is appropriate for employees.

Members may also consider whether it is necessary to have a Code that applies to all employees or whether the public interest would be satisfied by having a Code of Conduct which applied to senior employees only. The core principles may already be covered to a greater or lesser extent by standard Terms and Conditions of Employment in any event.

Question 17

Should the selection of 'qualifying employees' be made on the basis of a "political restriction" model or should qualifying employees be selected using the delegation model?

Commentary

It may be that the delegation model would be difficult to put in place since all local employees act only under powers delegated to them by the Authority and many employees have different levels of delegation. Only the three Statutory Officers (Head of Paid Service, Chief Finance Officer and Monitoring Officer) have their own personal statutory duties. The category of "politically restricted posts" is defined by statute and would give a precise definition of the most senior employees to whom a Code perhaps ought to apply.

Question 18

Should the code contain a requirement for qualifying employees to publicly register any interests?

Any such requirement would have to be in accordance with Article 8 of the Human Rights Act 1998 and the Data Protection Act 1998 where it is necessary for the protection of the rights and freedoms of others and the protection of public morals. Members may consider that there is a justifiable case for requiring senior employees to disclose such interests in this context. The second issue is whether that disclosure should be publicly accessible. Again this must be considered in the context of article 8 of the Human Rights Act (Respect for Private Life) and the Data Protection Act. Members may consider that it would be more difficult to establish a justifiable case for requiring those interests to be made public than simply requiring those interests to be disclosed to the Council. There may also be issues around accessibility to that information within the organisation itself given the sensitive nature of the disclosures made.

Question 19

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

Commentary

It is noted that there is no requirement for employees to register the categories of interest which are registerable under the Members Code such as membership of an outside body to which they have been appointed by the Authority, membership of a charity, other employment, Gifts and Hospitality with a greater value than £25, a tenancy of the Authority's property or occupation of any land in the Authority's area. Members may

consider that these interests if they manifest by reason of employment may be of significance and ought to be declared.

Question 20

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?

Commentary

It is noted that the provision around prejudicial interests simply states that "where possible, they should take steps to avoid influential involvement in the matter. Where this is not possible, their prejudicial interest should be made clear."

Members may consider that this is not sufficient in the context of an employee dealing with a matter where they agree they have prejudicial interest.

Question 21

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?

Commentary

The requirement to register interests with the Authority's Monitoring Officer would appear impractical. Members may consider that the appropriate person to have regard to these registrations is the line manager.

Question 22

Should the employees' code extend to employees of parish councils?

Commentary

Members may wish to consider whether this proposal should be mandatory or discretionary. Some large Town/Parish Councils may feel it is appropriate to apply this to their employees. However for small Parish Councils it may be inappropriate.