

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

F

Subject:

Proposed amendments to the Code of Conduct for Elected Members.

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 proposed amendments to the Code of Conduct for Elected Members.

Suzan Hemingway
Assistant Director Corporate Services
(City Solicitor)

Portfolio:

Report Contact: Suzan Hemingway
Phone: (01274) 433696
E-mail:
suzan.hemingway@bradford.gov.uk

Improvement Area:



2006-2007
Improving Rural Services
Empowering Communities



INVESTOR IN PEOPLE

Suzan Hemingway, Assistant Director Corporate Services (City Solicitor)



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 proposed amendments to the Code of Conduct for Elected Members.

2. Background

- 2.1 The Local Government White Paper, Strong and Prosperous Communities, issued in October 2006 set out the Government’s proposals to put in place a clearer, simpler and more proportionate model Code of Conduct for Members which would include changes to the rules on personal and prejudicial interests. This followed a consultation by the Standards Board for England in February 2005 and a further discussion paper issued by the then Office for the Deputy Prime Minister in December 2005.
- 2.2 In January 2007 a further consultation document, “Consultation on Amendments to the Model Code of Conduct for Local Authority Members” was published and the Local Authorities (Model Code of Conduct) Order 2007 came in to force on 3 May 2007.
- 2.3 However, in the interim, further issues regarding conduct in a Member’s non-official capacity were raised as a consequence of a court judgement in 2006. This cast doubt on the ability of the Code to cover Members’ conduct not linked to the performance of their public duties. However, it was made clear by ministers during the passage of the Local Government and Public Involvement in Health Act 2007 that it was considered that certain behaviour, even when there is no direct link to the Member’s official role, can have an adverse affect on the level of public trust in Local Authority Members and local government as a whole.
- 2.4 It is therefore proposed to review the Code once again, to examine how well it has functioned in practice following the changes in May 2007 and to address the issue of conduct of Members in a non-official capacity.
- 2.5 It is proposed that the Members Code be restructured by revoking the existing Order and making a new one. The new Order will propose that the Code is differently formatted making it easier to interpret and clearer in its application by dividing it into 2 sections; the first dealing with Members’ conduct when acting in an official capacity and reflecting what is in the current Code, the second dealing with Members’ conduct in their non-official capacity.
- 2.6 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 for a model code of conduct for local and government employees. These proposals are dealt with in a separate report to this committee.
- 2.7 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.

- 2.8 Appendix A has reproduced questions 1 to 12 with a commentary for consideration by Members of the Standards Committee.
- 2.9 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 term of this reports.

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 consider the consultation paper and the questions and agree a response.
- 6.2 Reason for that recommendation
To ensure the Standards Committee is fully engaged in the proposals to amend the Code.
- 6.3 That Standards Committee consider what further actions they wish to include in the work programme arising out of this consultation.
- 6.4 Reason for that recommendation
To ensure Standards Committee fully understand the proposed amendments to the Code.

10. **Appendices**

Appendix A – Code of Conduct for Local Authority Members - Questions posed by Consultation Document.

Appendix A
Code of Conduct for Local Authority Members - Questions posed by Consultation Document.

Question 1

Do you agree that the Members Code should apply to a members conduct when acting in their non-official capacity?

Commentary

Consideration should be given as to whether a Member's conduct in their private life reflects upon their suitability to continue as a member. It is of course a matter for the electorate whether they wish to re-elect a member who they feel is no longer suitable but that can only take place when that member stands for re-election.

Question 2

Do you agree with the definition of "criminal offence" for the purpose of the Members Code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

Commentary

The proposals are that this should apply to situations where the member has been convicted in a criminal court where he/she does not have the opportunity of paying a fixed penalty. The proposal is to limit the application of the Code to more serious offences and avoid confusion as to what fixed penalty notices constitute a criminal conviction, which are civil matters and which are an alternative to prosecution.

Members may wish to consider whether the Code should apply to a member's private life even if the conduct does not constitute a criminal offence. For example what about disclosures of confidential information for personal gain?

Question 3

Do you agree with the definition of "official capacity" for the purposes of the Members Code? If not what other definition would you support? Please give details.

Commentary

It is noted that the definition includes where the member is acting as a "representative of the Authority". This word is not defined in the Act or the Code. Members should consider whether a more precise definition of this term is required.

Question 4

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?

Commentary

Members should consider whether such actions should be brought within the scope of the Code if the conduct does impact on the suitability of the member to continue as a public representative.

Question 5

Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

Commentary

Members will be aware that securing a criminal conviction is a lengthy process. In theory a member could stand for re-election and it would be a matter for the electorate to determine whether someone who was still the subject of criminal proceedings was suitable. However, in some Councils this could effectively mean a member remained in post for up to 3 years before the electorate had that option.

Question 6

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?

Suggested Amendments

- Make paragraph 12(2) mandatory rather than adoptive for Parish Councils.

Paragraph 12(2) allows a member who has a prejudicial interest to make representations as a member of the public but not to take part in the decision itself which is mandatory for most authorities but only applies to Parish Councils if positively adopted.

- Membership of other bodies

It is suggested that paragraph 8(1)(a)(i) and (ii) be amended to make it clear that this refers to another body of which you are a member, or which exercises functions of a public nature.

- Registration of gifts or hospitality

It is suggested that paragraph 8(1)(a)(vii) to be amended to clarify that a member is required to register any gift or hospitality with an estimated value of at least £25. The current drafting isn't clear on this point.

- Prejudicial Interests

It is suggested that paragraph 10(2) of the Code be amended to remove the double negative to make it clear that a prejudicial interest exists where the business of the Authority affects your financial position or the financial position of a person listed in paragraph 8 of the Code or it relates to the determination of any approval, consent, licence, commission or registration to you or those persons listed in paragraph 8 of

the Code.

- Registration of Members Interests

It is proposed that any new Members Code would take into account any existing registration of members interest so that those who have already registered their interests in line with the 2007 Code do not have to repeat the process when the revised Code is introduced.

Commentary

These proposals would seem to be sensible in the context of the existing Code and some of the difficulties in applying said Code.

Question 7

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

Commentary

Members are asked to consider any particular issues they have had in respect of the existing Code.

Question 8

Are there any aspects of conduct in a members official capacity not specified in the Members Code that should be introduced? Please give details.

Commentary

It is unclear in the existing Code as to its application to informal meetings, site visits and correspondence. The Welsh Code for Members extends the definition of "meetings" to "informal meetings between a member and one or more other members or officers of the authority, other than group meetings". Members may wish to consider whether the Code should be more specific about these types of activity.

Question 9

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.

Commentary

Members may wish to consider the practicalities and administrative difficulties of compliance with this timescale where there are large authorities and specifically areas with significant numbers of Parish Councils who will have a particular meetings cycle.

Question 10

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?

Commentary

Members may consider that this is already covered by the General Principles of honesty and integrity and the duty to uphold the law.

Question 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?

Commentary

Members may wish to consider whether the criminal conduct should be limited to that which compromises the reputation of the member or the authority or their ability to perform their duties.

Question 12

Do you agree with the definition of “official capacity” for the purposes of the General Principles Order?

Commentary

Members are referred to the comments above about the need to be clear as to what is meant by “acting as a representative of your authority” and whether the Code is to apply to informal meetings.