

**CODE FOR THE FUTURE – CONSULTATION PAPER
ON THE REVIEW OF THE CODE OF CONDUCT FOR MEMBERS
(Report by the Director of Central Services & Monitoring Officer)**

1. INTRODUCTION

1.1 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 the consultation process 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.

1.2 Following a series of workshops and meetings in the interim, the Standards Board have identified the following key areas for review and shaped these areas into 29 questions –

- ◆ public interest defence in relation to disclosure of confidential information;
- ◆ the duty for Members to report misconduct by colleagues;
- ◆ the line between public and private conduct;
- ◆ personal and prejudicial interests;
- ◆ registering interests.

1.3 The deadline for responses to the consultation is 17th June 2005. Following the consultation, the Standards Board for England will make a number of recommendations to the Office of the Deputy Prime Minister for consideration with a view to any changes to the codes being agreed by the end of 2005. The Board intend to publish a summary of responses received.

1.4 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 the consultation exercise.

2. CONSULTATION

2.1 The purpose of the consultation is to review the effectiveness of the Code of Conduct and to explore ways in which it can be simplified, clarified and improved. The Standards Board for England have indicated that they would welcome opinions on sections of the Code not covered by the Consultation and issues not raised.

- 2.2 The Board have invited responses to the consultation paper by way of 29 questions. The questions are set out in a leaflet enclosed with Members' copies of the Agenda. For ease of presentation, suggested responses had been drafted sequentially for Members of the Committee to consider. There may also be other issues on which Members may wish to express views.

3. THE QUESTIONS

3.1 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 and steer 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. They are:-

Selflessness, honesty and integrity, objectivity, accountability, openness, personal judgement, respect for others, duty to uphold the law, stewardship and leadership.

Suggested Response – Yes – the General Principles should be included as a preamble to a revised Code of Conduct. The principles represent the standard to which a Member should aspire and would help to provide a context for the rules of the Code itself. Indeed in any training activity undertaken by the Monitoring Officer, the presentation commences with an explanation of the general principles as an introduction to the Code. As the general principles have, to date, been integral to the interpretation of the Code it is strongly suggested that they should formally be incorporated within it. The general principles are wide ranging, so in our view there is no requirement for the addition of any extra ones!

3.2 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 –

“A Member must –

(b) treat others with respect”;

This applies to Members only 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 have decided to focus on paragraph 2 (b) because of difficulty in interpreting the general requirement and the subjectiveness of the term “respect” the understanding of which often varies widely between individuals and between ethnic, local and regional cultures.

Suggested response – No, making the definition of “disrespect” more specific may mean that it could become more inflexible and would not reflect the variety of views on what is “respectful”. Practical experience of interpretation of the Code would help clarify the term and the context of its use. It is also arguable that Members are elected to comment on matters of public concern provided any comments made do not breach discrimination legislation or become overly personal. It is an important feature of local democracy that Members continue to be entitled to express their views albeit within a legislative and code of conduct framework.

- 3.2.1 Summary - Bullying – The Board have received a number of complaints alleging bullying by Members of Officers and fellow Members. The Code of Conduct does not contain a specific provision to address bullying. To date, the Board have dealt with complaints alleging bullying under paragraphs 2(b), 2(c) and 4 of the Code of Conduct which cover the need to treat people with respect, not to seek to compromise impartiality and not to bring the Authority into disrepute.

Suggested response – Yes, the proposal to incorporate a definition of bullying into a revised Code should be welcomed to assist Ethical Standards Officers and Monitoring Officers in identifying bullying behaviour and to send a clear message to Members that behaviour of this nature will not be tolerated.

3.3 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 which is acquired and which the Member believes to be of a confidential nature.

Suggested response – Yes, in the light of the new Freedom of Information requirements, the Committee might consider that it is sufficient to state that a Member should not disclose information which was lawfully confidential or exempt under existing legislation. This would mean that it would not be a breach of the Code of Conduct if it was demonstrated that the decision to treat a matter as exempt or confidential was unlawful.

- 3.3.1 Summary - Regarding the public interest defence, the Board believe that the intention behind the Code of Conduct is to protect information that is properly confidential, not information that it is convenient or expedient not to release into the public domain or publicise. Members have a duty to ensure good governance of the authority and to protect as confidential only information that is properly confidential. The Board acknowledge the call for greater openness and access to information, reflected in the Freedom of Information Act 2000.

Suggested response – Yes, under the Freedom of Information Rules a local authority must seek to balance the need to maintain confidentiality where appropriate and the public interest in disclosing information. When applying the Freedom of Information Rules, the presumption should be towards the public interest. If the public interest has not been considered properly, the decision to treat a matter as confidential may not be lawful. In the circumstances, the Committee may take the view that the Code of Conduct should contain an explicit public interest defence for Members who believed they have acted in the public interest by disclosing confidential information. However, the question arises as to the need to clarify what is the “public interest”. In that the principles encourage honesty and integrity, Members should not be constrained by the Code when they believed they should have disclosed information for public interest reasons.

3.4 **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. Allegations of disrepute which have arisen in the public domain, such as while a Member is on Council business, have been far more straightforward to deal with than those which have arisen in Members’ private lives.

Suggested response – the Report of the Committee in Standards in Public Lives Tenth Inquiry, published in January 2005, recommends that the Code of Conduct should not cover matters which are wholly unrelated to an individual’s official capacity. The Committee may wish to consider to what degree the actions of Members in their private lives should be scrutinised and subjected to discipline under the Code. Members’ private conduct may only be of concern if it is likely to compromise the reputation of the authority. Perhaps this provision should continue to link a Member’s conduct in their private life to its relevance to the performance of their public office. However, is there a type of conduct, within the wider area of private conduct that should be covered by this provision of the Code? 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. Do those cases of unlawful behaviour sanctioned by the courts or the police, such as criminal convictions, police cautions and regulatory infringement undermine the public's confidence in the Members ability or fitness to carry out their official duties. If the answer "yes" there has to be a distinction in those cases where the offence has not been proven.

3.5 **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, when using the authority's resources themselves, or authorising others to use them, abide by the authority's requirements, such as its resource protocols. Members must also ensure that the resources are not used for political purposes other than those purposes necessary for Members carrying out the duties of their office. Resources includes land, premises and any equipment such as computers, photocopiers and fax machines. The time, skills and help of anyone employed by the authority are also resources.

Suggested Response – Yes – the Code in this respect is clear enough. It should remain absolute and not allow a lower threshold for some resource use. However, local protocols rather than the Code of Conduct should set out specific requirements for Members' use as practice varies between authorities. It is considered that 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.

NB: The Board is considering the issue of a model protocol for resources. In the interests of clarity and consistency across the legislative framework, 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, and particularly Officer time, for inappropriate political purposes would be welcomed.

3.6 **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 need to 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 Board.

This requirement has resulted in complaints being made which might otherwise not have been reported. However, the Board have also received a number of complaints which it believes were politically motivated and malicious, rather than reflecting legitimate concerns about potential breaches of the Code.

Suggested Response – The spirit of this part of the Code should be retained as it gives effect to the principles of openness and accountability. It is in the public interest that misconduct and corruption are reported when there are proven grounds for doing so. However, the Code should acknowledge the seriousness or significance of some breaches in comparison with others and the text proposed by the Board would address this point using the words “knows or is informed” rather than “becomes aware”.

A Member must, if he knows or is informed of any breach of the Code of Conduct by another Member which he or she:-

- (a) reasonably believes to be serious or significant, or –*
- (b) on the basis of the facts known to them at the time, should reasonably have concluded to be serious or significant;*

make written allegation to that effect to the Standards Board for England as soon as it is practicable for him or her to do so.

Members should be released from the duty to report potential breaches of the Code arising from acts in a Members' private life. This would not prevent a Member making an allegation for breach of the Code in their private life under the paragraph relating to disrepute. To ensure consistency of standards across the country and to avoid potential conflicts of interest, it is essential that all cases continue to be referred to an independent body ie. the Board for investigation in the first instance.

It is not in the interests of Members, the public or the Board to spend resources on receiving and considering false malicious allegations. The Committee may not wish to support the suggestion that there should be provision in the Code to deter Members from making false malicious allegations. The provision could act as a deterrent for Members making complaints where they do have legitimate concerns in case subsequent investigation of the complaint finds the Members concerns to be unfounded. A preamble to the Code of Conduct

giving advice as to the legitimate use of this part of the Code would be preferable. In terms of protection for whistleblowers, the Code does not seek to prevent serious concerns from being raised and if a Member does seek to intimidate a complainant these matters can be dealt with through other provisions of the Code such as disrepute and disrespect.

3.7 **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 which 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. Members are not required to leave the meeting and refrain from voting unless their interest is also prejudicial. There are certain prejudicial interests which the Code allows to be redefined as personal in specific circumstances. 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.

Suggested response – the Committee would welcome a definition of the terms “friend” and “wellbeing” in guidance issued by the Board, particularly given High Court endorsement of the definition of “wellbeing”, and believe that it is not appropriate that the Code itself should contain an interpretation of the meaning of these terms. To enhance the integrity of the Code and to improve its practical application, it would be less cumbersome if Members were not required to declare interests which are shared by a substantial number of other inhabitants in an Authority’s area. The question of public service interests relating to service on other public bodies has caused some confusion among parishes in Huntingdonshire since the

inception of the Code, particularly as it is common for Members, in smaller communities, to be involved with other community bodies, either as a representative of the authority or in their own right. The Board believe 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. There should be no objection, in principle, to an individual serving on a number of public bodies and the fact that an issue being considered by one body may involve another body with which the Member is concerned should not necessarily indicate that the Members judgement of the public interest will be prejudiced. In these circumstances, the Committee support the proposed new approach to Members who serve on other public bodies and the introduction of a new category of “public service interest” which would be subject to the prejudicial interest test. Where a public service interest is not prejudicial, there will be no need to declare it at the meeting provided that it was properly recorded in the Members’ register of interests. Where a public service interest was prejudicial, it would need to be declared and the Member concerned would not be able to vote on the issue under discussion. However, Members with prejudicial public service interests would be able to remain in the room and participate in debate but withdraw before any vote was taken.

Similarly, there is a third category of interest which covers memberships of charities and lobby groups. As the Code of Conduct does not currently distinguish sufficiently between the types of personal interests that can arise the Committee may wish to endorse the view that public service interests and interests arising from membership of charities and lobby groups should only be prejudicial –

- ◆ where the matter has a direct impact on the body concerned (for example a grant of money);
- ◆ where the Member is involved in regulatory matters in a decision making capacity, for example, planning and licensing where it is generally accepted that particularly high standards of probity and transparency are required.

Where prejudicial interests arise from membership of charities and lobby groups, Members should be able to remain in the room and participate in debate but withdraw before any vote is taken.

3.8 **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. The interest must be 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 interests, leave the room and not be involved in nor seek to influence improperly, the decision.

Suggested response – the Code attempts to protect transparency by preventing Members from using their position to exert influence over decision making. All Councillors have influence by virtue of their role and this influence would be brought to bear upon decisions if Members address a meeting in their personal capacity or were to remain in the meeting during the vote. Whilst a Member may influence the decision, the Code must continue to ensure that that influence is not improper. If a Member has a prejudicial interest he/she should not participate in the meeting. The Committee may agree that there are sufficient avenues available for Members to communicate their constituents views to meetings in the event that they had a prejudicial interest in the matter under discussion.

In the event that a Member declares a prejudicial interest at a meeting, the Committee may wish to comment that as that Member is required to withdraw from the meeting, should there be a necessity for that person to declare the nature of their interest and in sufficient detail to identify that interest.

3.9 **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 Committee support the inclusion of an extra provision in the Code to provide Members with a dispensation from publicly registering sensitive information about their employment. Instead this information could be provided to the Monitoring Officer and would not be available to the public. This confirms the practice adopted locally by the Monitoring Officer. In respect of a requirement to register membership of private clubs and organisations, the Committee may wish to endorse the approach proposed by the Board that, for the sake of clarity and transparency, there should be an explicit requirement to register membership of private clubs and organisations regardless of their location, contrary to the view of the Board that the requirement only should apply to those within the authority's area given the relationships and interests that can be fostered by and between Members through Members

clubs and which can result in a significant body of influence in local government decision-making.

3.10 **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. Contrary to the view of the Board, the Committee do not believe it necessary to declare offers of gifts and hospitality that have been declined. In those circumstances where gifts come from the same source over a period of time and the cumulative value of the gifts is over £25, and whilst supporting the Board's view that these gifts ought to be registered, the Committee might wish to comment that placing a duty on the Monitoring Officer to maintain a comprehensive record of such gifts would be onerous and difficult. The Code should continue to recognise one off gifts only. The Committee support the £25 limit as still being appropriate.

4. RECOMMENDATION

4.1 In the light of the foregoing summary of the Board's consultation paper, the Committee is

RECOMMENDED

to approve the suggested responses to the consultation paper on behalf of the District Council.

BACKGROUND INFORMATION

Standards Board for England Consultation Paper on the Review of the Code of Conduct for Members – January 2005.

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