

**CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF
CONDUCT FOR LOCAL AUTHORITY MEMBERS
(Report by the Director of Central Services and 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. In September 2004, the Standards Board for England announced their intention to commence a consultation process to review the Members Code of Conduct. The Committee contributed to this review in June 2005 and towards the Government consultation paper "Standards of Conduct in English Local Government: The Future" in December 2005. This represented the Government's response to the recommendations of the Standards Board for amendments to the Model Code of Conduct.
- 1.2 Subsequently, the Local Government White Paper "Strong and Prosperous Communities" published in October 2006 announced the Government's intention to put in place a clearer, simpler and more proportionate Code of Conduct for Members of local authorities.
- 1.3 The Government has now published a consultation paper seeking views on a proposed new Model Code of Conduct for Members by 9th March 2007. A copy of the consultation paper is enclosed for Members only.

2. CONSULTATION

- 2.1 The Government have invited responses to the consultation paper by way of eight questions. The questions are set out in their entirety in Annex B to the consultation paper. The Government have indicated that they would also welcome other comments and suggestions on the consultation paper. For ease of presentation, suggested responses have been drafted sequentially for the Committee to consider.

3. THE QUESTIONS

- 3.1 **Question 1 – Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?**

Suggested response – Although a balanced approach has been achieved in the proposed text for paragraph 3(a) (iii), it should be made clear that the rules on disclosure of information cover information received by a Member in his/her official capacity or which relates to the work of the Council to overcome any opportunity to claim that information disclosed was not received by the Member in his/her capacity as a Councillor. The current draft also does not cover the case of a Member who discloses confidential information to a third party, perhaps for legitimate reasons, but places no similar obligation of confidentiality on the recipient, thus allowing that third party to publish the confidential information without redress. Perhaps an additional sub-paragraph should be drafted to cover this point.

It is noted that the Standards Board would issue guidance on how they would expect Members to interpret the nature of a “public interest”. This guidance should suggest that the Authority’s Monitoring Officer or Deputy Monitoring Officer determine the public interest case as adopted by the District Council in their Constitution in relation to exempt information under the Local Government (Access to Information) (Variation) Order, 2006.

- 3.2 **Question 2 - Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in members’ private capacity to those activities which have already been found to be unlawful by the Courts, appropriate ?**

Suggested response – Yes – the proposed text appears to be appropriate. Given the recent court judgement which suggested that the current Code of Conduct should apply even if the offending conduct had nothing specifically to do with the Members position as a Councillor, it would consequently appear appropriate that any conduct in a private capacity found to be unlawful by the courts should be subject to the code of conduct and not behaviour falling short of a criminal offence.

- 3.3 **Question 3 - Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished do consultees think some or all of its provisions should be promulgated in a different way eg. via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?**

Suggested response – Yes – The Code of Recommended Practice of Local Authority Publicity is serving a useful purpose and in the same way as the new single code of conduct will be applicable to all authorities, it would be appropriate if the Code was similarly applicable to all.

- 3.4 **Question 4 - Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?**

Suggested response – Currently the Code requires a Member to notify the Monitoring Officer should he/she receive any gift or hospitality over the value of £25. Although there is no provision for such information to be made public in the register of interests, the declarations received are maintained locally in the same way as the Register of Financial and Other Interests and it would seem reasonable to open the “gift” register to inspection by the public. After all, the Board always contend that the financial interests register protects the position of a Member. The same argument could be made for the gifts register. As a receipt of a gift or hospitality is likely to have occurred by the time an issue is under consideration, the

obligation to disclose should cease after one year following the receipt of that gift or hospitality. After that period any influence likely to be created by the offer of the gift would be meaningless and in any event, it may be that Member would not be able to recall having received such gifts after a five-year period. It is important that receipt of a gift should remain on the register.

- 3.5 **Question 5 - Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?**

Suggested response – Whilst the addition of the phrase “close personal association” will help clarify the definition of a personal interest to include matters affecting a range of personal, business and professional associates as well as people who would specifically be termed as “friends”, the omission of the definition of “family” leaves the Code much less precise than before. Would this relate to the Member’s household, irrespective of blood relationship or is it blood relatives even if living separately? Why not re-insert the word “relative”?

- 3.6 **Question 6 - Would it be appropriate for new exceptions to be included in the test as additions to the list of items which are not to be regarded as prejudicial?**

Suggested response – Yes – This provision also should be extended to cover the taking out of insurance as well as granting of an indemnity but a caveat could be added to say that this does not apply where the indemnity affects the member to a greater degree than other members. It would clearly be inappropriate for a member to grant him or herself an extensive indemnity or take out a specific insurance just for his or her own personal protection from liability. It is also considered sensible to amend the Local Authorities (Code of Conduct) (Local Determination) Regulations to allow a member to attend a hearing of a Standards Committee into his or her conduct in order to be able to defend himself or herself.

- 3.7 **Question 7 - Is the proposed text, relaxing the rules to allow increased representation of meetings, including where members attend to make representations, answer questions or give evidence, appropriate?**

Suggested response – Yes – However, in the past difficulties have arisen in the interpretation of the Code in several areas. The drafting of a new code should seek to avoid repetition of any instances where uncertainty can arise. This is one such area. The new Code fails to provide any definition of when a matter “relates to the financial affairs of the body”. Could this be interpreted as the primary purpose of the matter affecting the financial affairs of the body or simply that the matter has some implications for the financial affairs of the Member. It also appears that reference to financial affairs would not cover cases where the proposal would affect the powers or existence of that body.

Similarly, this paragraph in the Code refers to the “determining of any approval, consent, licence or permission (in respect of Planning and Licensing) in relation to the body”. This is rather a narrow interpretation and it might be sensible, for the avoidance of doubt, to provide that determination shall also mean granting, varying, amending, attaching conditions to, revoking and withdrawing such approval. The Standards Board for England should also be encouraged to define other terms inherent in the proposed code ie. “lobbying” and “philanthropic bodies”.

New paragraph 9 (2) (b) (v) should also be extended to cover the taking out of insurance as well as granting of an indemnity with a caveat which states that this does not apply unless the indemnity affects the member to a greater degree than other members. (see also paragraph 3.6).

A question of interpretation also arises in the definition of the terms “public service interest”. It might be difficult to determine whether a lobby group is public spirited or campaigning for the private advantage of its members. A monitoring officer would have to exercise great care to ensure a member did not form his/her own lobby group, claim a public service interest exemption and vote on the matter on which he/she had a clear personal and prejudicial interest.

- 3.8 **Question 8 - Is there a better, more user-friendly way of ensuring the text is gender-neutral, for example, would consultees consider that amending the wording to say “you” instead of “he or she” or “him or her” would result in a clearer and more accessible code for members?**

Suggested response – this would seem to be a reasonable way to make the text gender-neutral and appropriately reflects the terminology used in up-to-date publications.

3.9 **General Comments**

The Committee is invited to make any other observations and may wish to highlight that it could be considered equally important for Members to declare personal and prejudicial interests and to withdraw from informal meetings such as briefings and meetings with Officers of the authority as it is for formal meetings. It could be made clear that the definition of “meeting” should mean any meeting with other members or with officers of the authority which is arranged by or on behalf of the authority. Members may also recall their previous comment that the ten general principles be incorporated as a preamble to the Code of Conduct. At that time, the Committee were of the view that the principles represented a standard to which a Member should aspire and would help to provide a context for the rules of the Code itself. The Committee might wish to reiterate its previous views that the general principles should act as a preamble to the draft code in order to identify the relationship between the general principles and the Code of Conduct.

4. RECOMMENDATION

- 4.1 Accordingly, the Committee is

RECOMMENDED

to approve the suggested responses to the consultation paper on behalf of the District Council adding any additional observations they may consider to be appropriate.

BACKGROUND INFORMATION

A revised model code of conduct for local authority members – published by the Department for Communities and Local Government in January 2007.

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