

**COMMUNITIES IN CONTROL: REAL PEOPLE, REAL POWER:  
CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND  
EMPLOYEES – A CONSULTATION**  
(Report by the Head of Legal and Estates Services  
and Monitoring Officer)

**1. INTRODUCTION**

- 1.1 The Local Authorities (Model Code of Conduct) Order 2007 came into force for all Authorities in May 2007. The Government has now published a consultation paper entitled “Communities in Control: Real People, Real Power: Codes of Conduct for Local Authority Members and Employees”. This paper invites views on proposals for revising the Local Authorities (Model Code of Conduct) Order 2007 and seeks comments on the proposed introduction of a Model Code of Conduct for Local Government employees by 24th December 2008. The proposed amendments to the Members’ Code have the support of the Standards Board for England and have arisen following practical experience of the first year of operation of the revised Code. It is anticipated that a new Code incorporating the outcome of the consultation process will come into effect by May 2009.
- 1.2 The most significant revision to the Members’ Code covers the issue of “private capacity” to cover those occasions where a Member’s criminal behaviour in a private capacity brings disrepute to the local authority.
- 1.3 Dr Robert Chilton, Chairman of the Standards Board for England, has commented –
- “We welcome the continuing attention given by Government to standards in local public life. The Code revisions upon which consultation is available deal with some of the outstanding issues around the Members’ Code of Conduct. There is a public expectation that serious misconduct in a Member’s private life should have a consequent repercussion on their elected role, so I welcome the chance to clarify this.”
- 1.4 The functions relating to the standard and conduct of Officers lies within the remit of the District Council’s Employment Panel. The Panel has considered that part of the consultation paper relating to the introduction of a Code of Conduct for Employees.
- 1.5 Only Chapter 2 of the consultation paper relating to the Members’ Code of Conduct is enclosed for the Committee as Chapter 1 deals with the mechanics of responding and Chapter 3 with the Model Code of Conduct for employees, which is dealt with in paragraph 1.4 above.

## 2. CONSULTATION

- 2.1 The Government has invited responses to the consultation paper by way of 12 questions. The questions are set out in their entirety in the Appendix to the consultation paper which is produced hereto. For ease of presentation, therefore, suggested responses have been drafted sequentially for the Committee to consider.

## 3. THE QUESTIONS

- 3.1 **Question 1 – Do you agree that the Members’ Code should apply to a Member’s conduct when acting in their non-official capacity?**

Proposal –

It is proposed that the new Members’ Code should contain the following provision:-

“Members must not bring their office or Authority into disrepute by conduct which is a criminal offence.” (Paragraph 2.9.)

*Suggested response –*

Yes – there are occasions when conduct in private life can reflect upon a Member’s suitability to continue as a Member and that leaving that person in place until the next election and not giving the electorate an opportunity to remove him/her from office can seriously damage the reputation of an authority and of local government in general. It is therefore important that the Code of Conduct for Members should apply to at least some of the conduct in a Member’s private life.

In supporting the inclusion of “The 10 principles of public life” as a preamble to the Model Code, the Committee considered that the principles underpinned the Code and were an essential foundation upon which the Code should be based. Amongst the principles are “honesty and integrity”, “duty to uphold the law” and “openness”. Where the conduct of a Member casts doubts or diminishes the confidence or trust of the public in that person, then the conduct of that Councillor should be held to account.

- 3.2 **Question 2 – Do you agree with this 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.**

Proposal –

It is proposed that ‘criminal offence’ be defined as any criminal offence for which the Member has been convicted in a criminal court, but for which the Member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction. (Paragraph 2.10.)

*Suggested response –*

The definition of ‘criminal offence’ for the purpose of the Members’ Code appears to be acceptable for the vast majority of instances. However, and whilst acknowledging that it is the intention to focus on the more serious offences, there could be an instance whereby a fixed penalty notice might be received by the Executive Councillor for Operational and Countryside Services for the unauthorised tipping of waste materials. This would be a failure by the Member responsible for the function but if penalised by a fixed penalty notice would take the offence outside the scope of the Code. It could be contended that the offence would so directly relate to the Member’s responsibility that it would be directly relevant to their credibility or that of their Authority and therefore the Code should be capable of responding to that event.

- 3.3 **Question 3 – Do you agree with this definition of ‘official capacity’ for the purpose of the Members’ Code? If not, what other definition would you support? Please give details.**

Proposal –

It is proposed that ‘official capacity be defined as ‘being engaged in the business of your Authority including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your Authority’.(Paragraph 2.14)

*Suggested response –*

The basic general conduct provisions of the Code apply only when the Member is acting in an official capacity. The proposed definition of ‘official capacity’ appears to be acceptable.

- 3.4 **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?**

*Suggested response –*

It is suggested that the proposition is acceptable.

It should also be noted that a criminal conviction resulting in a custodial sentence of more than 3 months without the option of paying a fine is already covered by Section 80 of the Local Government Act 1972, with the Member automatically disqualified from office for 5 years. (Paragraph 2.18.)

- 3.5 **Question 5 – Do you agree that an ethical investigation should not proceed until the criminal process has been completed?**

Proposal –

Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the Standards Board

would cease their investigation until the criminal process had been completed. Any subsequent action under the conduct regime in respect of a Member's private conduct would follow the conclusion of the criminal procedure. The Member would not be suspended during the period of the criminal process.

*Suggested response –*

Given the general maxim – that you are not guilty unless proved otherwise and whilst accepting that there may be a long interval between events and conviction, it would appear reasonable in most circumstances that the Code of Conduct should only be applied when evidence of criminal conduct is provided by actual conviction of the Member in the Courts even if that conviction was because of an offence which occurred outside the Member's official capacity. Following on, it would also therefore be reasonable to suspend consideration of any Code of Conduct case and investigation pending the outcome of the criminal process.

However, there may be extreme circumstances where the reputation of the Authority may be discredited where a Member is allowed to continue in office and it is suggested that that on these rare occasions, the Referrals (Assessment) Sub Committee be authorised to consider whether the evidence of criminal conduct, other than a conviction is sufficient to enable a Code of Conduct complaint to be progressed.

3.6 **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 response –*

(a) Parish Councils

The consultation paper makes reference to five areas where amendments have been proposed to the current Code. In terms of 'Parish Councils' – it would seem to be eminently sensible that Article 2 (5) of the Local Authorities (Model Code of Conduct) Order 2007 be amended to make paragraph 12 (2) mandatory rather than discretionary for Parish Councils. This would ensure consistency across Councils, ease understanding and save unnecessary administration and concern. Paragraph 12 (2) allows Members with a prejudicial interest to make representations at a meeting only if members of the public are able to attend that meeting for the same purpose.

(b) Membership of other bodies

It has been suggested that paragraphs 8 (1) (a) (i) and (ii) of the current Code be amended to clarify that the Sections are referring to other bodies that you are a member of or which exercise functions of a public nature, putting it beyond doubt

that this is not a reference to the Authority itself. (Paragraph 2.25.)

(c) Registration of Gifts and Hospitality

It is suggested that the current wording could be amended to clarify that a Member is required to register a gift or hospitality with an estimated value of at least £25 in his or her Register of Members' Interests. (Paragraph 2.26.)

Any suggested amendment which clarifies the current Code is welcome and the more direct wording used to impose the duty on the Councillor to register any gifts or hospitality received with an estimated value of at least £25 is supported. It has been the experience of the Monitoring Officer that the issue which causes most concern with Parish Councils is the obligation to disclose the nature or existence of gifts and hospitality for a period up to three years before the date of the meeting. This timescale is impractical to monitor either by the Monitoring Officer, Clerks to Parishes and Councillors themselves. When asked previously, the Committee has made representations on this issue and may wish to suggest again that this period should be reduced to a maximum of 12 months. In view of the lapse of time that has past since the Code was originally introduced there may also be merit in raising the threshold from £25.

(d) Personal Interests

In terms of the disclosure of personal issues generally, the Code prescribes that Members need only disclose to the meeting the existence ..... of a personal interest where that interest arises from membership of another public body if he/she addresses the meeting on that business. Again, it would be simpler, more practical and less open to misinterpretation if the Code required Members to declare that interest irrespective of their intention to speak or otherwise on the business. (See paragraph 3.7 poste)

(e) Prejudicial interests

The wording of paragraphs 10 (1) and 10 (2) would certainly be improved by redrafting and would remove the double negative to make it clearer as to the circumstances when a prejudicial interest arises.

Similarly, the suggestion that the meaning of 'determining' in paragraph 10 (2) (b) could be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications would also be welcomed.

The suggestion that paragraph 10 (2) (c) could be amended to clarify that a Member would not have a prejudicial interest in the business of the Authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a Member of the Authority had failed to comply with the Code is also supported.

(f) Registration of Members' Interests

It is proposed that existing registration of interests should carry forward when the revised Code is introduced to avoid Members having to repeat the process. However, the Standards Board themselves, have previously advised that Members should be reminded to review their existing registrations of interests at regular intervals and this has been the practice of the District Council since the Code was first introduced in 2002. On re-election, a signed statement to the effect that the Member's interests had not changed would suffice.

3.7 **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?**

*Suggested response –*

In addition to the comments already made about the timescale for the declaration of gifts and hospitality (paragraph 3.6 (c)) and for the declaration of personal interests (paragraph 3.6 (d)), the Committee may wish to comment on two additional suggested amendments. The first of these relates to the 'disclosure and misuse of confidential information in private life'. The disclosure of confidential information which a Member has obtained through their connection with the Authority, or its use for personal advantage in private life, would be an example of serious misconduct but at present this is not covered by the Code of Conduct.

Secondly, whilst understanding the reasons why, the word 'friend' was amended to read 'person with whom you have a close association', the terminology remains vague and difficult to interpret. It might be helpful if, in supporting guidance, that it is made clear that this provision only covers people with whom the Member has such a close continuing relationship that a member of the public might reasonably conclude that it is likely to influence the Member's perception of the public interest on matters which affect that individual.

3.8 **Question 8 – Are there any aspects of conduct in a Member's official capacity not specified in the Members' Code that should be included? Please give details.**

*Suggested response –*

National law company, Bevan Brittan, specialist in local government law has made a number of suggestions in this respect and three appear to be relevant to the District Council's operations.

(a) Application of Code to Informal Meetings, Site Visits and Correspondence

The definition of 'meetings' in paragraph 1 (4) is currently very limited. There is public concern at the possible undue influence applied by Members in informal meetings and correspondence

for which there is no public access. This could be addressed by extending 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', and by requiring Members to disclose that they are Members in any correspondence with the Authority, even if that correspondence is in a private capacity. This makes the position absolutely clear. It can readily be checked by inspection of correspondence and disclosure of Officer's notes at meetings as background papers when formal decisions come to be taken.

(b) Application to Ward Councillor Decision Making

Section 236 of the Local Government and Public Involvement in Health Act 2007 enabled local authorities to arrange for the discharge of functions by a Ward Councillor within that Ward. It made no provision for the application of the Members' Code to such discharge of functions. The normal rules on disclosure of personal and prejudicial interests do not apply in this case as there is no 'meeting' yet the potential for conflicts of interests are greatly increased where a Councillor is taking decisions in the area in which he/she lives, where his/her family go to school and have their friends, or where he/she has his/her business. It would appear that the Code requires amendment in this respect to ensure the recording of any personal interest in the record of the decision.

(c) Private Representations

A dilemma arises where a Member wishes to make representations to his/her own Authority in a private capacity, for example as a householder in respect of a neighbouring planning application. On the one hand disclosing in the representation that he/she is a Member risks an accusation of improper use of position to influence the decision. On the other hand as the Officers are probably well aware of the identity of the correspondent, failing to disclose this fact can risk an opposite accusation that the Member is acting in an underhand manner. This issue could be overcome by providing that a Member must disclose the existence and nature of their personal interest when he/she makes representations to the Authority on a matter in which he/she has a personal interest and, if the representation is made verbally, they can confirm that interest in writing within fourteen days. This would resolve the dilemma and enable the fact of the Member's interest to be recorded in the correspondence.

- 3.9 **Question 9 – Does the proposed timescale of two months, during which a Member must give an undertaking to observe the Members’ Code, starting from the date the Authority adopts the Code, provide Members with sufficient time to undertake to observe the Code?**

*Suggested response –*

It has always been this Council’s policy to require Members to give a fresh undertaking to observe any revised Code of Conduct following its adoption by the Authority. The two month period for such undertakings was applied in 2001, when the Code of Conduct was first adopted and is perfectly reasonable. The Committee may wish to endorse a comment that failure to give such an undertaking within that period would mean that the Member concerned is not disqualified, but is prohibited from acting as a Member of the Authority until the undertaking is given.

- 3.10 **Question 10 – Do you agree with the addition of this new general principle, applied specifically to conduct in a Member’s non-official capacity?**

*Suggested response –*

The general principles are supposed to be the enduring principles which underlie the Code. As such they should not be changed unless there are overriding reasons for doing so. While this exhortation is clearly well intended, it is much wider than the Members’ Code of Conduct, which is supposedly limited to criminal conduct which relates in some manner to the Member’s position as a member. In addition, the core principle is already substantially covered by General Principles 2 (honesty and integrity) and 8 (duty to uphold the law). Accordingly, the Committee may be of view that adding a general and unrestricted principle of not engaging in criminal conduct is unnecessary.

- 3.11 **Question 11 – Do you agree with this broad definition of ‘criminal offence’ for the purpose of the General Principles Order? Or do you consider that ‘criminal offence’ should be defined differently?**

Proposal –

That ‘criminal offence’ be defined as any conduct that has resulted in a criminal conviction.

*Suggested response –*

Although not agreeing with the suggestion that it is necessary to change the General Principles for this purpose, if a change is to be made it should be limited to criminal conduct ‘which compromises the reputation of the Member’s office or Authority, or their ability to perform their functions as a Member’.



3.12 **Question 12 – Do you agree with definition of ‘official capacity’ for the purpose of the General Principles Order?**

*Suggested response –*

For the purposes of the revised General Principles Order the definition of ‘official capacity’ as being engaged in the business of your Authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your Authority would seem to be reasonable.

**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 consider to be appropriate.

**BACKGROUND PAPERS**

Consultation Paper – Communities in Control: Real People, Real Power: Codes of Conduct for Local Authority Members and Employees published by the Department for Communities and Local Government on 1st October 2008.

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