

STANDARDS COMMITTEE

Date: TUESDAY 22 MARCH 2005

Item No.

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7 Consultation on Member Code of Conduct 1

In accordance with the provisions of the Local Government (Access to Information) Act 1985, the Chair will be asked to take this item as a matter of urgency.

SUPPLEMENTARY AGENDA

Committee	STANDARDS COMMITTEE	Item No	6
Report Title	CONSULTATION ON MEMBER CODE OF CONDUCT		
Ward			
Contributors	HEAD OF LAW		
Class		Date	22 March 2005

1. Summary

This report sets out details of a consultation exercise being conducted by the Standards Board for England in relation to possible changes to the national member Code of Conduct and seeks the view of the Committee for comments to be made in response.

2. Reason for Urgency

It has not been possible to give five clear days' notice on this matter in accordance with the provisions of the Local Authorities (Executive Arrangements) (Access to Information) Regulations 2000. The reason for the urgency is that the deadline for submitting a response to the consultation on the national member Code of Conduct is 17th June 2005 and it is uncertain whether the Committee will meet again before that date.

3. Recommendation

That the Standards Committee consider the comments they wish to make to the Standards Board in response to the consultation.

4. Background

The national statutory Code of Conduct for Members was introduced in 2001. All authorities must adopt a Code which incorporates all of the elements required by statute as these are the minimum standards required to be included in local authorities' own Member Code of Conduct.

The Standards Board for England have identified the following key areas for review:-

- The possibility of a public interest defence in relation to disclosure of confidential information
- The duty of members to report misconduct by other members
- The distinction between private and public conduct
- Personal and prejudicial interests
- The requirement to register interests

The deadline for submitting a response to the Standards Board is 17th June 2005. The Standards Board will then make submissions to the Office of the Deputy Prime Minister with a view to amendments, if any, being made by the end of this year.

The outcome of a House of Commons Select Committee of Inquiry into the effectiveness of the Standards Board, and the 10th Report of the Committee on Standards in Public Life will also be taken into account as part of the consultation exercise.

5. The questions

5.1 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!

5.2 **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 national Code of Conduct states that

“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 here recognised the difficulty in interpreting this general requirement. The subjectiveness of the term “respect” may vary 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 will 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.

5.2.1 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 national 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.

5.3 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) of the national Code of Conduct 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

The general principle is a good one, namely that members should treat confidential information as confidential, and not disclose it. If such a defence were to be introduced into a national Code of Conduct it may lead to disclosure by members of exempt information for political purposes, rather than for genuine public interest purposes. However, it might be appropriate if any such defence were introduced for the test to be the same as that applied to the Council under the Freedom of Information provisions – namely if the information were in the hands of the Council and a request were made to it for disclosure, would the Council have to disclose it. However, this

should be a strict test and the member ought to be required to take advice before disclosure.

5.4 **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 circumstances, 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 may be more straightforward to deal with than those which have arisen in Members' private lives.

Suggested response

Members' private conduct is a concern to the extent that it impacts upon the reputation of the authority or the office of councillor. On being elected it is inevitable that a member's private actions will be more subject to scrutiny than the actions of the general public, as those who are elected are responsible for decisions affecting the lives of all local people. It is therefore inevitable that the actions of members in a private capacity will have an effect on the confidence of local people both in the individual member, in the Council and in the public sector in general. The public needs to trust their local representative, and in return the representative needs to command their respect.

The Monitoring Officer recommends that the requirement not to bring the Council or the office of councillor into disrepute should apply at all times, whether the member acts in a private or public capacity. Sometimes it may be clearer that the member has brought the Council into disrepute where there has been a criminal conviction or where criminal behaviour is acknowledged, though this may not always be the case. A conviction for a minor traffic offence will not have the same effect as a conviction for grievous bodily harm for example.

Further, conduct which falls short of criminal conviction or acknowledged criminal behaviour may bring the Council into disrepute and represent a breach of the Code as it stands.

For these reasons, the Monitoring Officer recommends that the disrepute provisions should remain as drafted, and remain flexible, with a judgement to be made in the circumstances of each case as to whether public trust and confidence in the councillor concerned or the Council would be affected by the offending behaviour.

5.5 **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 include 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. 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, including electronic resources and particularly Officer time, for inappropriate political purposes would be welcomed.

5.6 **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 as follows:-

“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.

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 wish to support the suggestion that there should be provision in the Code to deter Members from making vexatious or malicious allegations. This reflects what appears in the Council's own whistleblowing protocol. 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.

5.7 Personal Interest

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 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 – Do you think the term “friend” requires further definition in the Code of Conduct?

The Monitoring Officer advises that a definition of the terms “friend” and “wellbeing” should be found in guidance issued by the Board and that it is not appropriate that the Code itself should contain an interpretation of the meaning of these terms.

Should the personal interest test be narrowed so that Members do not have to declare interests shared by substantial number of other inhabitants in an authorities area?

The Monitoring Officer recommends that Members should have to declare interests which are shared by a substantial number of other inhabitants in an Authority’s area. These are existing provisions to allow for dispensation by the Standards Committee if appropriate though this process could be simplified, for example by removal of the requirement by each member affected to make an individual request for dispensation setting out reasons.

The views of the Committee are sought on Q19, 20 and 21. The Monitoring Officer does not make any recommendation on these issues

5.8 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 Member's judgement. The interest must be likely to harm or impair the Member's 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 the decision improperly.

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, there should be a necessity for that person to declare the nature of their interest and in sufficient detail to identify that interest.

5.9 **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 Member's 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 question of sensitive employment is not an issue which has arisen in Lewisham. 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 should only apply to those within the authority's area. This response is suggested given the relationships and interests that can easily be fostered across borough boundaries.

The Monitoring Officer does not recommend any change to existing provisions of the code in relation to sensitive employment information

5.10 **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. The Committee may wish to support a requirement 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 may support the view that the £25 limit is too low, and that £50 may be more realistic.

BACKGROUND INFORMATION

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

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