

Committee: Standards Committee
Date: 21 March 2005
Agenda Item No: 4
Title: Review of the Code of Conduct for Members
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Summary

- 1 The Standards Board for England with the support of HM Government is conducting a review of the Code of Conduct for Members. This report is to inform Members of the consultation exercise and to invite Members to consider what response (if any) they would wish to make to the consultation documents.

Background

- 2 The Local Government Act 2000 changed the law relating to probity. Prior to the Act coming into force there were statutory provisions dealing with the treatment of pecuniary interests and a non-statutory National Code of Guidance which was advisory only. There were no sanctions applicable to a breach of the National Code.
- 3 The Local Government Act 2000 made provision for there to be a code of conduct for Members. The minimum requirements of that code were contained in a statutory instrument (the Local Authorities (Model Code of Conduct) Order 2001). Whilst authorities were permitted to add to this code they were not allowed to omit any parts. Advice from the Standards Board for England at the time was that authorities should adopt the Model Code without variation. It is believed that most, if not all, authorities accepted this advice. Uttlesford District Council adopted its code of conduct with effect from May 2002.
- 4 The Code is based on ten general principles contained in the Relevant Authorities (General Principles) Order 2001. These are as follows:
 - Selflessness
 - Honesty and integrity
 - Objectivity
 - Accountability
 - Openness
 - Personal judgement
 - Respect for others
 - Duty to uphold the law
 - Stewardship
 - Leadership

5 The Standards Board has published a full consultation paper and an introductory leaflet. Both of these contain a number of specific questions to which the Standards Board solicits response. These are as follows:

- 1 Should the ten general principles be incorporated as a preamble to the code of conduct?
- 2 Are there any other principles which should be included in the code of conduct?

Officer comment: It is felt that there would be value to incorporating the general principles in the code of conduct. Although the principles appear in the Members' Handbook, they are a separate document. As reliance is based upon the general principles in determining whether a Member has brought his or her authority into disrepute it is felt that they should form part of the same document as the code.

- 3 Is it appropriate to have a broad test for disrespect? Should there be a more defined statement or should the Code of Conduct include a specific provision on bullying? If so, is the ACAS definition appropriate for this purpose?

Officer comment: It is felt that most Members would understand what behaviour may or may not be disrespectful. This would include bullying. The ACAS definition of bullying is "a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine an individual or a group of individuals, gradually eroding their confidence and capability, which may cause them to suffer stress". Cases of bullying have been dealt with under the disrespect provisions. Most recently the former Leader of North East Derbyshire District Council, David Nuttal, was disqualified for three years for bullying staff.

- 4 Should the Code of Conduct contain an explicit public interest defence for Members who believe they have acted in the public interest by disclosing confidential information?
- 5 Should the Code of Conduct 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.

Officer comment: Where Members have disclosed confidential information on the basis that they believe it is in the public interest for there to be disclosure then disclosure may be appropriate under Article 10 Human Rights Act 1998. Technically speaking there would still be a breach of the Code and Members may therefore feel that the Code should make it clear that it would not be breached if disclosure were made where such disclosure were to be made in the public interest. However, the law relating to the disclosure of confidential information is a complex area and to specifically provide for such a defence may cause uncertainty. A possible compromise would be to permit Members to disclose information which would be required to be disclosed by the

authority itself if a request for such information were to be made under the Freedom of Information Act 2000. As the Act contains a number of exemptions, however, Members should be urged to seek legal advice before making such a disclosure.

- 6 Should the provision relating to disrepute be limited to activities undertaken in a Member's official capacity or should it continue to apply to certain activities in a Member's private life?
- 7 If the latter, should it continue to be a broad provision or should it be restricted solely to criminal convictions and situations where criminal conduct has been acknowledged?

Officer Comment: This is one of only two provisions in the Code which currently apply when the Member is acting either as a Councillor or otherwise as a Member of the Council. Many breaches of the Code will also be held to have brought the Member or the Council into disrepute. However, some activities which would not otherwise be a breach of the Code and which are committed by a Member in a private capacity may still fall foul of these provisions. Criminal convictions are a case in point. However, sanctions have been imposed in other cases. A Member of one council was suspended for five months after a scuffle following a meeting of their political association. In a similar case another Member was disqualified for three years. In neither of these cases was a prosecution brought although both instances attracted publicity which reflected upon the councils concerned. Members may consider that conduct which is not in an official capacity and which does not attract a conviction may nevertheless reflect badly upon the council and thereby cause either the council itself or the office of councillor to be drawn into disrepute.

- 8 Should the Code prohibit breaches of the publicity code, breaches of any local protocols and misuse of resources for inappropriate political purposes?
- 9 If so, how could inappropriate political purposes be defined?
- 10 Is the Code of Conduct right not to distinguish between physical and electronic resources?

Officer Comment: At present there is no requirement in the Code of Conduct for Members to observe any locally adopted protocols or codes. It is, of course, open to authorities to amend the Code of Conduct either to incorporate such a provision or to incorporate the provisions of the codes or protocols themselves. If this were to be done then such provisions would have the same force and effect as the current Members' Code. The Adjudication Panel for England has stated that where authorities do adopt additional local protocols or codes if a Member fails to observe the same this could be conduct which brings the Council into disrepute. It is not considered that there is any significant difference between physical or electronic resources.

- 11 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?
- 12 If the provision should be narrowed, how should it be defined (eg should it apply to misconduct in a Member's public capacity only or only to significant breaches of the Code)?
- 13 Should there be a further provision about making false, malicious or politically motivated allegations?
- 14 Does the Code of Conduct need to provide effective protection for complainants against intimidation or do the existing sections of the Code of Conduct and other current legislation already cover this area adequately?

Officer Comment: The original intention of the Code was that it should be self-policing. Hence, Members are required to blow the whistle if they have reasonable grounds for believing there has been a breach of the Code of Conduct. The existence of such a provision in the code may encourage Members to make reports of potential breaches. In practical terms, however, there appears to be no sanction for a breach of this provision of the Code. In thirty cases which have been reported to the Standards Board, the Ethical Standards Officer has found in each case either that there has been no evidence of a breach of the Code or that no action needs to be taken. The requirement, if literally followed, could lead to many trivial breaches being reported to the Standards Board which would not justify investigation. Further, it may prevent Members seeking to resolve issues by less formal means.

- 15 Does the term "friend" require further definition in the Code of Conduct?
- 16 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 the authority's area?
- 17 Should a new category of "public service interests" be created relating to service on other public bodies and which is subject to different rules of conduct?
- 18 If so, should public service interests which are not prejudicial and which appear in the public register of interests have to be declared at meetings?
- 19 Should Paragraph 10(2)(A-C) which provides limited exemption from the prejudicial interest rules for some Members in certain circumstances be removed from the Code of Conduct?
- 20 Should less stringent rules apply to prejudicial interests which arise through public service and membership of charities and lobby groups?

Officer comment: The absence of a definition of “friend” has caused some concern. It is clearly more than a mere acquaintanceship. However, it is considered that an over prescriptive definition would not be helpful. Members may consider that an objective test should be recommended to the Standards Board (eg would a member of the public be aware of the nature of the relationship regard the Member and third party as being “friends”). The consultation paper supports a new category of public service interests. Where Members are also members of public bodies the suggestion is that this need not be declared at meetings providing that

- (a) The membership is recorded in the Register of Members’ Interests and
- (b) The interest is not prejudicial. It is further suggested that if the interest is prejudicial the Member should be able to speak but not vote on the issue. The purpose of declarations of interests at meetings is to enable those present to identify what interests the Members have without the need to refer to the Register of Members’ Interests. Members may consider that this principle ought to be upheld. If this proposal were introduced then paragraph 10(2)(A-C) would be deleted from the Code. Members may consider that the suggested treatment of public service interests by allowing Members to speak but not vote where the interest is prejudicial is an acceptable compromise. Members may also consider that such a compromise should be extended to membership of charities and lobby groups.

- 21 Should Members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?
- 22 Should Members with prejudicial public service interests be allowed to contribute to the debate before withdrawing from the vote?

Officer comment: Members of the council are currently prejudiced when their own cases are under consideration. Unlike members of the public, Members of the council are not entitled to present their own applications for planning permission, licences, etc. The Court of Appeal has stated that the mere presence of a Member in the room could be seen to be trying to improperly influence the outcome. However, the Members themselves and their constituents may feel disenfranchised if the Member cannot present a case. Members may consider that for planning applications a Member with a prejudicial interest should be entitled to present his or her case and then withdraw. For applications for licences, Members may consider that further leeway is necessary and that the Member should be present at all times save for when a decision is being made.

- 23 Should Members employed in areas of sensitive employment (eg the security services) need to declare their occupation in the Public Register of Interest?

- 24 Should Members be required to register membership of private clubs and organisations? If so should it be limited to organisations within or near an authority's area.

Officer comment: Whilst there is a need for openness in registration of interests there are certain circumstances where it may have a detrimental effect upon the individual Member if details of employment are entered in the register. Officers would suggest that dispensations should be available (to be granted by the Standards Committee or the Monitoring Officer) whereby details of employments are kept in a separate private register held by the Monitoring Officer in certain specified cases.

- 25 Should the Code of Conduct require that the register of gifts and hospitality be made publicly available?
- 26 Should Members also need to declare offers of gifts and hospitality that are declined?
- 27 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 this be defined?
- 28 Is £25 an appropriate threshold for the declaration of gifts and hospitality?

Officer comment: There seems little purpose in holding a register of gifts and hospitality if it is not available for public inspection. Members may consider that instead of a separate register, gifts and hospitality should be entered in the Register of Members' Interests. With regard to same source gifts Members may consider that where these exceed a specified aggregate figure over a period of time they should be declared. £25 is a very low threshold for the declaration of gifts and hospitality. Members may consider proposing an alternative higher amount.

RECOMMENDED: Members determine what response (if any) they wish to make to the Standards Board for England's Consultation on the Code of Conduct

- Background Papers:
- A Code for the future - An introduction to the review of the Code of Conduct for Members.
 - A Code for the future - a consultation paper on the review of the Code of Conduct for Members.