

**EXTRAORDINARY MEETING of the STANDARDS COMMITTEE held at  
COUNCIL OFFICES LONDON ROAD SAFFRON WALDEN at 6.00 pm on  
21 FEBRUARY 2007**

Present:- S A Brady (Chairman and Independent Person).  
Councillors C A Cant, C D Down and R C Harris (Uttlesford  
Members), Councillors P G Leeder and R A Merrion (Town and  
Parish Councils) and M Hall (Independent Person).

Also present:- Councillors J F Cheetham, S C Jones, J E Menell and  
M Miller.

Officers in attendance:- M J Perry and M T Purkiss.

**S21 APOLOGIES**

An apology for absence was received from Councillor R M Lemon.

**S22 CONSULTATION ON THE PROPOSED AMENDMENTS TO THE MODEL  
CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS**

At the last meeting, the Assistant Chief Executive reported that the Government had just published a consultation paper on proposed amendments to the model code of conduct for local authority members. The Committee resolved at that meeting to hold this extraordinary meeting in order to consider the consultation and determine how the Council should reply.

He reported that following the Graham Committee, the Standards Board for England had carried out detailed consultation on the members' Code of Conduct. The Standards Committee had participated in that consultation both by attendance at roadshows and in writing. Arising from the consultation, the Office of the Deputy Prime Minister had published a discussion paper on Conduct in English Local Government. It accepted the principles for reform put forward by the Standards Board but at that stage failed to deal with any of the detail.

The Assistant Chief Executive said that the proposed amendments would come in three tranches. The first of these would be the revision to the Code itself. He said that the Government had truncated the consultation period from the usual 12 weeks to 6 weeks. It proposed laying the new statutory instrument before Parliament towards the end of March/beginning of April with a view to authorities being in a position to adopt the new Code just prior to or immediately after the May elections. He said that the next round of amendments would come in the Local Government and Public Involvement in Health Bill when this became statute. The third set of amendments to the Code would come from statutory instruments and guidance to be laid and given under the bill when it became law.

The Assistant Chief Executive submitted a detailed report which set out the current Code of Conduct and the proposed amendments.

The main amendments were as follows and the comments of the committee are set out in italics at the end of each paragraph :

- (i) Following an Adjudication Panel decision that the Panel had no jurisdiction to make findings of unlawful discrimination, the revised Code will provide that members should not do anything which would seriously prejudice the authority's duties regarding equalities. Members will wish to consider whether the new wording is adequate or whether a more positive slant should be placed upon this duty.

*The Committee agreed that the current wording was adequate.*

- (ii) There is a new provision outlawing bullying. The Code does not contain a definition of bullying which is to be left to guidance to be issued by the Standards Board.

*The Committee noted this proposal.*

- (iii) With regard to disclosure of confidential information, the new Code provides that this can be done where it is in the public interest. This is an area fraught with difficulty and members may wish to consider recommending that guidance should be issued by the Standards Board regarding the disclosure of confidential information.

*The Committee agreed that the Standards Board should be urged to issue guidance regarding the disclosure of confidential information.*

- (iv) Following comments of Mr Justice Collins in the case of Livingstone v Adjudication Panel for England, the commission of a criminal offence is not conduct which could be deemed to have brought a member or the authority into disrepute. The Assistant Chief Executive reported the guidance given by the Standards Board in the light of this judgement on 29 January. An amendment to the Code indicates that a criminal offence could be regarded as being conduct bringing the authority into disrepute. However, this provision of the Code appears to contradict the provisions of the Local Government Act 2000 as it now stands. If the Local Government and the Public Involvement in Health bill is passed as drafted, this will be corrected when the Act takes effect. The consultation document states that it is the intention of ministers that private conduct should only be relevant where criminality is involved. However, the Code as drafted provides that criminal conduct 'may' be included in conduct which brings the member or the office into disrepute. On this wording clearly other conduct could be deemed relevant. Members will wish to consider whether they should support only criminal conduct being a basis for bringing a member or the authority into disrepute or (consistent with previous representations made by the Committee) other improper conduct could fall within this category.

*The Committee decided to reaffirm its previous decision.*

- (v) The duty to report suspected breaches of the Code is being removed. There is however a new provision of the Code that members must not

intimidate those who may be involved in complaining about or dealing with allegations of a breach of the Code.

*The Committee noted the position.*

- (vi) One effect of the amendments is that there will no longer be a separate Register of Gifts and Hospitality. The Register of Members' Interests is required to be open to public inspection. There is no statutory provision for the Register of Gifts and Hospitality to be made available for public inspection although officers considered that it would be difficult to justify an exemption under the Freedom of Information Act if a request was received. Under the proposed new Code gifts or hospitality become registerable as interests. As such they are at their lowest personal interests which would need to be disclosed whenever a matter relating to the donor or host was being discussed by Council or any of its committees. The obligation to disclose gifts and hospitality only ceases 5 years after the gift or hospitality was received. Members will need to consider whether this may pose too onerous an obligation. Members may favour as an alternative retaining the separate Register of Gifts and Hospitality but making it clear that this document is open to public inspection.

The Committee had some concerns about these proposals and felt it would be difficult to recall such events over a period of five years. It was therefore agreed to advise the Government that members support the retention of a separate register of gifts and hospitality and to make it clear that this document is open to public inspection.

- (vii) Members are currently required to declare interests affecting their relatives or friends. There is no definition of 'friend' in the current Code although relations are defined. The proposed new Code will require disclosure of interests relating to friends, family and 'persons with whom the members has a close personal association'. None of these terms are defined. The Government seem to be content to rely upon guidance given by the Standards Board to assist members on the meaning of these words. It is likely that close personal associates will extend to cover personal, business and professional associates.

*The Committee considered that public perception was of prime importance and it was not helpful for the proposed new Code to have no definitions. The Committee agreed to make representations suggesting that the existing wording and definitions should be retained.*

- (viii) The definition of personal interests is to be revised. At present, a member will have a personal interest if his or her interest is greater than the majority of the inhabitants in the district. The proposed amendment is that a member would only have a personal interest if he or she were affected by it to a greater degree than the majority of inhabitants of the ward affected by the matter.

*The Committee supported this proposal.*

- (ix) Where the interest relates to that of a friend, family member or close personal associate the proposed Code makes it clear that the obligation to disclose only relates to circumstances where the member knew or ought to have reasonably known of the interest held by that person. 'Reasonably' is an objective test although the Assistant Chief Executive's view would be that a member would only fall foul of this provision if he or she had deliberately turned a blind eye to a situation.

*The Committee supported this proposal.*

- (x) The new Code creates a new category of 'public service interest'. A public service interest is defined differently for different sections of the revised Code. For the purpose of declaring interests a public service interest arises where a member is a member of another public body. In such circumstances, the proposed Code provides that the existence and nature of the interest needs only to be declared at meetings where a member speaks on the relevant issue.

*The Committee felt that if a Councillor did not intend to speak, but intended to vote they should declare a personal interest and it was agreed to make representations suggesting that the existing wording should remain as it is more open and transparent.*

- (xi) The provisions for declaring and withdrawing from the Chamber when a prejudicial interest arises have been retained. Some additional minor exemptions have been included. However, there are 3 major alterations where members may make a contribution to the debate notwithstanding the existence of an apparent prejudicial interest. The first of these is a public service interest which for the purposes of this part of the Code is defined as not only membership of another public body but also membership of a charity, a lobbying or philanthropic body of which the member is also a member. The public service interest exemption does not apply where the matter under consideration relates to the finances of the body concerned or to the determination of any approval, consent, licence, permission or registration relating to that body. The next significant exemption is that a member does not have a prejudicial interest in a matter where he or she attends a meeting for the purpose of making representations, answering questions or giving evidence relating to the matter providing that the meeting agrees that the member may do so and providing also that the member withdraws after making representations etc. The final exemption arises from a new provision in the Code clarifying that a member has a prejudicial interest in a matter at a meeting of an Overview and Scrutiny Committee if it relates to a decision of a committee of which he or she is or was at the time of the decision a member and he or she was present for the consideration of that matter. The exemption is similar to that referred to above save that the consent of the meeting is not required for the member to answer questions or otherwise give evidence relating to the decision nor is the member required to withdraw having answered questions or given such evidence.

*The Committee felt that the exemption to contribute to the debate, notwithstanding the existence of an apparent prejudicial interest should not be with the consent of the meeting but should be written into the constitution of the authority. The Committee agreed to make these representations to the Government and if they were not accepted would make a recommendation to Council. The Committee also supported the proposals regarding overview and scrutiny.*

- (xii) When the Code was first introduced there was a great deal of controversy regarding the registration of interests (particularly from parish councillors who were not previously subject to registration). There has been some slight relaxation proposed by the new Code. Where a member considers that information which he or she would need to register could threaten the safety of the member and his or her family then the member may apply to the Monitoring Officer for the interest not to be registered. Where the Monitoring Officer agrees that the information is sensitive and needs not to be registered there is no obligation on the member to disclose the nature of the interest at meetings although the existence of the interest should still be disclosed.

*The Committee supported this proposal.*

- (xiii) The definition of personal interests in paragraph 7B(iii) refers to membership of a company. Where a company is limited by shares the holding of 1 share constitutes membership. Looking at the other provisions of paragraph 7 this is clearly not the Government's intention and members may consider that either the reference to company be deleted or be qualified by adding the words 'not limited by shares'.

*The Committee agreed to make representations that the words 'not limited by shares' should be added.*

- (xiv) In paragraph 11(3), there is a definition of 'public service interest' for that paragraph. However, nowhere else in this paragraph does the expression 'public service interest' appear. This is clearly an omission on the part of the Government. It could not be anticipated what the exemption was intended to be and it was suggested that this matter is drawn to the Government's attention.

*The Committee agreed to draw this matter to the attention of the Government.*

The Committee also considered the questions which had been put forward by the Department for Communities and Local Government and agreed that these had all been addressed with the exception of whether the text should be gender neutral. The Committee considered that the current wording was satisfactory.

Councillor Cheetham pointed out that some parish councils co-opted members of the community who had specialised skills to join the parish council and advise on certain issues. The Assistant Chief Executive clarified that these were not members of the parish council and it was generally agreed

that a term other than 'co-opted' would be preferable. In answer to a further question he said that he would liaise with the Essex Association of Local Councils to see what training was appropriate for town and parish councils on the new code of conduct.

The Committee noted that the Government had truncated the consultation period from the usual 12 weeks to six weeks and agreed that representations should be made to the Government on the inadequacy of this consultation exercise.

RESOLVED that the comments of the Committee shown in italics be submitted to the Department of Communities and Local Government

The meeting ended at 7.25 pm.