

## Two codes go to war

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***The DCLG has published an 'illustrative text' of what a local authority code of conduct might look like. The LGA and other stakeholders have also drafted a code. So how do they compare? Peter Keith-Lucas reviews the documents.***



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The Department for Communities and Local Government had indicated that the new spirit of localism meant that they no longer issued guidance to local authorities. Indeed, there is no provision in the Localism Act for anything like the Model Code under the 2000 Local Government Act.

So the Local Government Association thought it would be sensible to try to put together the "LGA Model".

The day after the LGA had published their model Code, and without any apparent warning, Bob Neill published the DCLG version or "illustrative text". I am not aware that he has ever explained why he felt that this was necessary, if LGA was already doing something similar.

But I have now done a comparison of the DCLG and the LGA Codes with the the old Model Code, and it is quite revealing:

- First, the DCLG Code and the LGA Code are so similar, sharing great passages of identical but quite individual drafting, that I can only assume that they derive from a common source document. Someone must have fed the same text to LGA members and to DCLG, and then both made slightly different amendments;
- Both Codes are seriously deficient on confidentiality;
- The DCLG version leaves out anything to do with treating others with respect, bullying, and politicising staff;
- Both versions omit anything on equalities.

As we are now two-and-a-half months from the promised date of implementation, and DCLG has yet to publish regulations which define the new Disclosable Pecuniary Interests or the transitional arrangements, including how outstanding complaints will be dealt with, I might suggest that DCLG could have used their precious time more effectively.

However, I have a serious concern about whether either Code provides a reasonable basis for addressing member misconduct:

- Some members misbehave. Misconduct can seriously damage the effectiveness and reputation of not only the member's own authority but of local government in general. There is no reason to believe that the abolition of the clarity of the old Model Code and the abolition of statutory sanctions for misbehaving members will result in any reduction in the extent to which some members misconduct themselves.
- As a general principle, a code which is intended to prevent misconduct should clearly identify what conduct is unacceptable. To illustrate, if you want to regulate car clampers, it is not very useful to have a code which says that clamping should be used to ensure the effective use of the car park. It is more effective to provide that you shall not clamp cars displaying a disabled driver badge; you shall affix a notice to each clamped vehicle clearly stating the 24-hour contact number, and you shall attend the clamped vehicle to accept payment and release a clamped vehicle within one hour of a call to that number;
- Both model Codes basically comprise the broad aspirational Principles ("Openness, Accountability", etc.) plus a few, quite selective, examples of what each Principle means in practice. So, both Codes provide the declaration of interests as the illustration of the Principle of Honesty. This simply confuses. Is "Honesty" limited to the declaration of interests, or is it a breach of the Code for a member to lie?
- The basic problem is that, if the Code comprises such broad principles, it provides no practical guidance beyond the limited examples as to what constitutes a failure to comply with the Code. That makes it very easy to accuse a member of failure. For example, is opposition a failure to provide Leadership? If the Leader is caught out by an event which he has failed to anticipate, is that a failure to provide Leadership?
- This might not matter if the new Code were enforced by Standards Committees with independent members and independent Chairmen. But it will now be enforced by Standards Committees on which the majority party has a voting majority, with no requirement for independent members, and an Independent Person who cannot have a vote.

The combination of a subjective Code and a political Standards Committee does not fill me with confidence.

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