

**Agenda Item:**

**Report to:** STANDARDS COMMITTEE

**Date:** 1 June 2005

**Report from:** Borough Solicitor

**Title of report:** REVIEW OF THE CODE OF CONDUCT FOR MEMBERS

**Recommendations:** To agree responses to the Standards Board's consultation on their review of the Code of Conduct.

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*The appendix to this report cannot be published on the Internet due to the images it contains. If you require a copy, please contact Katrina Strong on 01424 781719 or email [kstrong@hastings.gov.uk](mailto:kstrong@hastings.gov.uk)*

## 1.0 Introduction

1.1 The Standards Board for England is conducting a review of the Code of Conduct for Members, which came into force almost three years ago, on behalf of the Office of the Deputy Prime Minister. The Government wishes to draw on the lessons learnt since adoption of the Code and the Standards Board have met with members, monitoring officers and others to identify a number of key areas for review. The key areas are as follows:-

- A public interest defence in relation to disclosure of confidential information
- The duty of members to report misconduct by colleagues
- The line between public and private conduct
- Personal and prejudicial interests
- Registering interests

## 2.0 The Consultation

2.1 Attached at Appendix A is the full consultation paper entitled "A Code for the Future". The Board sets 29 questions and in the paper discusses at length the issues in question and gives the Board's view of the position. I am setting out the 29 questions below and suggest responses to them. Members will, of course, sometimes have very different views.

2.2 The deadline for the consultation is 17 June and the Committee will determine the response on the consultation, though I may as monitoring officer tender my own views if they differ from that of the Committee.

2.3 Members may wish to raise further issues with the Standards Board under the consultation which can be discussed at Committee.

## 3.0 The Questions

3.1 In the following I shall adopt the numbering in the consultation paper.

1. **Should the ten general principles be incorporated as a preamble to the Code of Conduct?**

Yes.

2. **Are there any other principles which should be included in the Code of Conduct?**

No, the existing ten principles are sufficiently wide and all-encompassing.

3. **Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?**

The test should be kept broadly stated. This is the view of the Standard's Board and any attempt to seek to further define "respect" would not be helpful. Most people understand what it is to "treat others with respect". It may be that local conditions will have an effect on what conduct is expected to achieve this and this will inform the investigation of a complaint.

4. **Should the Code of Conduct include a specific provision on bullying? If so, is the ACAS definition of bullying quoted in the full consultation paper appropriate for this?**

Yes. The ACAS definition would be a suitable starting point but it is suggested it should be extended to include a single act of harassment or bullying.

5. **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?**

There has to be a distinction between information which is confidential and that which is exempt for the purposes of Schedule 12A to the Local Government Act 1972. The former is quite a narrow category of information as defined by the Schedule eg information from HM Government in relation to matters of security. This category of confidential information must not be disclosed. Exempt information, on the other hand, may be considered in Part I of the Agenda, if the committee resolves to do so. The paper makes reference to the Freedom of Information Act 2000. It is to be remembered that the duty under Section 1 of the Act to give information is one imposed on the authority, not on an individual member. A member may well feel constrained to disclose information which is exempt or confidential in the wider sense on the grounds of public interest. However, an express public interest defence might encourage disclosure of information which should properly be treated as exempt under the Local Government Act 1972 and which might well be exempt under the Freedom of Information Act 2000. The member may well wish to raise the question of the public interest to be served in a particular item being discussed in Part I rather than Part II of the Agenda. Having made that representation and the Committee having decided to proceed in Part II, it would seem inappropriate for that member should then go against the majority decision. It is suggested, therefore, that the public interest issue should be one of mitigation rather than defence.

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 withheld unlawfully?**

Yes.

7. **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?**

It is suggested that the existing Paragraph 4 by the inclusion of the words "which could reasonably be regarded as bringing his office or authority into disrepute" achieves the correct balance.

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?**

It is suggested that it is left broadly stated with the existing qualification. There is an accumulation of case decisions which could form the basis of guidance in this and other areas.

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?**

Yes.

10. **If so, how could we define "inappropriate political purposes"?**

The use of the words "inappropriate political purposes" implies that there are some political purposes which are not inappropriate and so it is questionable whether the code is too absolute. It is suggested that the Code could take Section 2 of the 1986 Act and the Code of Recommended Practice on Local Authority Publicity as starting points. The phrase would encompass use of resources to affect public support for a political party as well as use to achieve the opposite for another political party. It is suggested that a de minimis approach is probably appropriate and that this might be better left to local protocols.

11. **Is the Code of Conduct right not to distinguish between physical and electronic resources?**

Yes. The Council has its own protocol on use of internet and e-mail and a breach of the Code would be unlikely to occur if a member were abiding by the protocol.

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, or somehow narrowed?**

Paragraph 7 of the Code has been the cause of some unnecessary references to the Board. In its paper, the Board makes reference to politically motivated, malicious and unfounded complaints and the waste of

Standard's Board resources in investigating such complaints. Nevertheless, despite representations that the paragraph should be scrapped because it unnecessarily burdens members with the onus of policing the Code, the Standards Board feels it should be retained because of its role of serving the wider public interest. One argument for retaining the paragraph is that it prevents members from turning a blind eye to misconduct. It is doubtful that this is so, though it might protect the whistleblower.

13. **If you believe the provision should be narrowed, how would you define it? For example, should it apply only to misconduct in a member's public capacity, or only to significant breaches of the Code?**

It is suggested that it be confined to misconduct in a member's public capacity which, if proved, would amount to a significant breach of the Code.

14. **Should there be a further provision about making false, malicious or politically motivated allegations?**

Not as part of the Code but it would be helpful if there were some guidance in the Preamble as suggested by the Board.

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?**

No, there is already sufficient protection.

16. **Do you think the term "friend" requires further definition in the Code of Conduct?**

Yes, the word "friend" is used in many different ways. It is suggested that the following might be an appropriate definition of friendship for the purposes of the Code "a relationship which a member of the public in full possession of the facts would reasonably regard as so close as to be likely to affect the member's judgment of the public interest." This definition would actually extend the meaning of friend beyond its usual meaning since it might encompass other relationships eg colleagues. The closeness of such a relationship can be just as harmful to the member's judgment of the public interest as a friendship.

17. **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 an authority's area?**

Yes. A definition of "substantial" should be included.

18. **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?**
- Yes.
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?**
- No.
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?**
- Yes.
21. **Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups?**
- Yes. Further clarification of when the interest is prejudicial as set out in paragraph 5.1.15 of the paper would be helpful. The Code needs to be covering all situations where a member is a representative or nominee on an outside body, including regeneration companies.
22. **Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?**
- No. Not where the interest is not a public service interest.
23. **Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?**
- Yes. Such treatment of any such prejudicial interest seems a reasonable balance between the public interest served in having the benefit of the views of one closely associated with the body and the public interest served in not have the actual decision affected by the interest.
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?**
- No, provided this is controlled as under paragraph 5.3.2. Some members of this Council, having suffered harassment of themselves and their families at their home addresses which are publicly accessible, have raised this as an issue. Members may wish to make some comment to the Board in relation to this.

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?**

Yes and it should be so limited.

26. **Should the Code of Conduct require that the register of gifts and hospitality be made publicly available?**

Yes

27. **Should members also need to declare offers of gifts and hospitality that are declined?**

Yes.

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?**

Yes. Definition might be by reference to the number of gifts received over a period of time which meet the threshold.

29. **Is £25 an appropriate threshold for the declaration of gifts and hospitality?**

It is suggested that the figure be retained, as it probably defines what is de minimis.

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BACKGROUND DOCUMENTS:-

