

Agenda Item:

Report to: STANDARDS COMMITTEE

Date: 28 February 2006

Report from: BOROUGH SOLICITOR AND MONITORING OFFICER

Title of report: **REVIEW OF THE CODE OF CONDUCT AND THE NEW
ETHICAL FRAMEWORK – THE GOVERNMENT RESPONSE**

Purpose of report: To advise Committee of the proposals for change arising out of the Standards Board consultation.

Recommendations: To note the proposals

1.0 Introduction

- 1.1 Members will recall considering the Council's response to the Standards Board consultation on the proposed review of the Member Code of Conduct.
- 1.2 The Government has now published its proposals, which are set out below.

2.0 The Ethical Framework

- 2.1 The Graham Committee on Standards in Public Life made recommendations on a review of the member code of conduct. The Government has now given its support to the general thrust of the recommendations, namely that there should be a further localisation of the system, to give local authorities greater ownership of the system, with the Standards Board continuing to have a strong, strategic role in providing guidance and support, and promoting best practice on the handling of allegations of misconduct. The role of co-opted independent members should be reinforced. The code should be made simpler and easier to understand and operate at a local level.
- 2.2 The following changes would require primary legislation and it is anticipated that these will be included in the next Local Government Bill:-

- **All standards complaints against Councillors would be made to the monitoring officer, rather than to the Standards Board**

Contrary to the Graham Committee view, the Government has concluded that the initial sifting or assessment of complaints should be undertaken by the authority's Standards Committee. It seems likely that the initial referral will, therefore, be to the monitoring officer rather than to the Standards Board, as it is currently. The monitoring officer would then have report the complaint to Standards Committee for it to undertake the current function of the Standards Board, namely, to decide:

- i) whether the complaint appears to disclose a failure to observe the Code of Conduct;
- ii) Whether the complaint merits investigation;
- iii) Whether the complaint is of such a serious nature that the investigation should be carried out by the Standards Board rather than arranged locally by the monitoring officer.

Clearly there would be issues of potential bias and predetermination if the same members were to be involved in the sifting process and then later on the hearing of a complaint. This may mean that we will have to review our committee structure, with the use of sub-committees to deal

with the different functions. I would expect that the Standards Board would issue detailed guidance on the process generally.

There will be resource issues for the Council, since the current Standards Board referral process filters out a considerable number of complaints.

- **Local authorities would refer up to the Standards Board complaints, which they felt unable to investigate or which their Standards Committee would not be able to determine, for example because they related to allegations of very serious misconduct.**

It is anticipated that the reserved capacity of the Standards Board will apply to cases where the appropriate sanction would exceed local Standards Committee powers or where there would be some unfairness in dealing with it locally.

The Government response makes reference to the possibility of introducing a system of local mediation and settlement of complaints. This is likely to mean more work for the monitoring officer and monitoring officers would want to be working within a clear statutory framework.

- **Standards Board would concentrate on monitoring and improving the effectiveness of the system and investigating only the most serious allegations.**

The Government is proposing to introduce performance standards in terms of setting targets on the time taken to complete stages in the process and to publish these. The Standards Board could make use of these published standards to target help where it is needed most, and perhaps, in an extreme case, to withdraw the powers of the particular Standards Committees to determine cases locally. Speed of delivery and quality of delivery, of course, do not always coincide

The Government is giving consideration to the possibility of Joint Standards Committees on a County-wide basis or between unitary authorities.

- **It would be mandatory that the Chair of Standards Committees and Sub-committees should be co-opted independent members.**

Whilst an independent chair has a valuable role in ensuring fair and impartial hearings, it may be that other matters eg corporate governance or procedural issues could be managed equally well by a non-independent chair. The Government rejected the Graham recommendation of a majority of independent members, recognising the value of local ownership and practical experience provided by elected members.

- **A parallel code of conduct for officers should be introduced.**

The Local Government Act 2000 provided for the Government to prescribe a national code of conduct for officers, which would automatically be incorporated into contracts of employment and would be enforceable through the Council's disciplinary procedures.

The Government has already conducted an initial consultation upon proposals for an officers' code (Appendix A). It now confirms that it will proceed to introduce such a code but that it will have to take account of any amendments to the member code and further detailed consultation on proposals will be undertaken.

This Council, along with most if not all others, has its own staff code of conduct which is more comprehensive than the draft consulted upon. Nevertheless, it is desirable that there is a national code of conduct in place for officers as there is for members, in the interests of public confidence in all those engaged in local authority public life.

- **Politically restricted posts will be retained.**

The Local Government and Housing Act 1989 imposes restrictions on certain party –political activities by chief and deputy officers and all officers above a certain salary level. It is possible for an officer in a politically- restricted post to apply to an Independent Adjudicator for exemption. The Government proposes to retain political restrictions but to transfer the functions of the Independent Adjudicator to Standards Committees.

3. Review of the Code of Conduct

3.1 The Government has resisted calls for the abolition of the Code of Conduct and has accepted all recommendations of the Standards Board. The changes can be effected by subordinate legislation and so should be achievable before the structural changes described above. The proposed changes are as follows:-

- **The code should be made clearer and simpler**

Undoubtedly, this would be welcomed by all.

- **No new “offence” of making a false or malicious complaint.**

Whilst the Government condemns such practice, it does not favour particular regulation on this and looks to training to discourage such behaviour.

- **The General Principles should form a preamble to the Code of Conduct.**

The Government considers that the General Principles (see Appendix B) should remain as they are and should form a pre-amble to the Code. Whilst this may be desirable, it is important that the distinction between positive aspirations and the identification of unacceptable conduct is made when legislating for what constitutes a breach of the Code.

- **The requirement for members to report other members to the Standards Board should be deleted.**

The Government accepts the Standard's Board view that this requirement tends to encourage frivolous and vexatious complaints.

- **A new "offence" of bullying should be added to the Code of Conduct.**

Whilst cases of bullying have been handled satisfactorily under the respect provision, the Government wishes to meet its commitment to the National Taskforce on Bullying and Harassment in Local Government. The ACAS definition is unlikely to be acceptable and the definition will include single acts of bullying.

- **The Code of Conduct should contain an exception for disclosure of confidential information where such disclosure was in the public interest.**

This response reflects the finding of the Case Tribunal in the case of Councillor Paul Dimoldenberg that there could be a public interest defence to a complaint of disclosure of confidential information, in accordance with Article 10 of the Human Rights Act 1998.

It also reflects the tendency towards a requirement for openness in public authorities. The Freedom of Information Act places a qualification on certain of the statutory exemptions that the information is only to be exempt if it is in the public interest that it is not disclosed. Likewise, the amendments to the categories of exempt information in Schedule 12A to the Local Government Act 1972 include a qualification that the information is only to remain exempt so long as the public interest in withholding the information outweighs that of disclosing it.

- **Outside official duties, only unlawful conduct should be regarded as likely to bring the member's office into disrepute.**

To ensure that this is workable, the Government will need to ensure that it properly defines what is "outside official duties". Likewise, "unlawful" covers civil as well as criminal wrongs and the term will need to be clearly defined.

- **The “offence” of misuse of public resources should be limited to serious misuse, and the Code of Conduct should define “inappropriate political purposes”.**

It is hoped that the Government will achieve a definition which is clear.

- **The range of interests which require to be registered should be reduced.**

Whilst the Government has endorsed this recommendation, the Standards Board has yet to make detailed proposals in this vital area. The Government agrees that sensitive employment should be notified to the Monitoring Officer but should not appear on the public register.

- **The Code should redefine “friend” as “close personal associate”.**

The use of the word “friend” has caused some difficulties of interpretation, so that the Standards Board have felt the need to issue guidance on what constitutes a friend. It is questionable whether the new definition would be any clearer.

- **Interests arising from membership of another public body, a charity or local pressure group should not prevent members from discharging their representative role.**

This has been a regular source of irritation to members, who are the Council’s nominee or representative on an outside organisation, that they have a personal interest which may also be prejudicial requiring the member to leave the Chamber at the beginning of the item in question. There is provision in paragraph 10(2) which states that a member in this situation may regard the interest as not being prejudicial. The Standards Board have, however, made it clear that the word is “may” and where eg the financial interests of the body are concerned, the member cannot rely upon the paragraph.

The Government supports the view of the Standards Board that such interests should only now be treated as prejudicial where the item will have a direct impact on the body concerned eg grant of money, or planning application. The Government has accepted the recommendation of the Board that in these circumstances, even where the interest is prejudicial, the member should be permitted to speak to the matter and answer any questions before withdrawing in advance of the debate and vote.

Another situation addressed by the Standards Board and accepted by the Government is the position of the ward member whose wellbeing is affected by a local planning proposal. Currently, under the Code there is a personal interest if the matter in question might reasonably be regarded as affecting his/her wellbeing to a greater extent than other council tax payers, ratepayers or inhabitants of the authority’s area.

The member then has to go on to consider whether this is also a prejudicial interest. Where the interest is prejudicial, the ward member is unable to represent his/her constituents. The Board's proposal is that, whilst this will continue to be a personal interest, it would not be a prejudicial interest where it affected the majority of Council tax payers, ratepayers or inhabitants of the ward which the member represents.

- **Standards Committees should have wider discretion to grant dispensations.**

Currently the rules permit Standards Committees to grant dispensations where 50% or more of the decision-making body are conflicted out by reason of prejudicial interests. It is proposed to give Standards Committees the power to permit individual members with prejudicial interests to speak, in order to represent their constituents, but not to participate in the debate or to vote.

- **The current £25 threshold for declaration of gifts and hospitality should be retained and the register of gifts and hospitality should be made public.**

The Government has accepted that this register should be public. It is also accepted that a series of small gifts from the same source should require to be registered where the cumulative value exceeds £25.

Equalities & Community Cohesiveness	
Crime and Fear of Crime (Section 17)	
Risk Management	
Environmental issues	
Economic / Financial implications	X
Human Rights Act	X
Organisational Consequences	X

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BACKGROUND DOCUMENTS:-

Office of the Deputy Prime Minister - Standards of Conduct in English Local Government: the Future