

Agenda Item No:

Report to: Standards Committee

Date of Meeting: 4 December 2008

Report Title: REVIEW OF MEMBER CODE OF CONDUCT

Report By: Jayne Butters
Borough Solicitor

Purpose of Report

To seek the response of the Committee to the Government's consultation on proposed revision of the Code of Conduct

Recommendation(s)

1. That Committee agrees the response to the Consultation as set out in the Appendix.

Reasons for Recommendations

The paper proposes implementation of the power to extend the Code of Conduct to private life and, as this is a significant change, members views are required.

Background

Context of the Consultation

1. Following the White Paper, Strong and Prosperous Communities, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 devolved the conduct regime to local standards committees keeping the Standards Board for England as a light-touch regulator, with monitoring and support and guidance functions.
2. In July 2007 the Council adopted the Revised Code of Conduct and the Government considers that a review of its operation is now appropriate. This review also takes account of the changes to the law regarding the application of the

Code to private life, made by the Local Government and Public Involvement in Health Act 2007.

3. The Government is proposing to restructure the format of the Code to make it easier to interpret and clearer in its application. As part of this it is proposed to structure the Code in two parts, the first dealing with conduct in an official capacity and the second in an unofficial capacity.
4. Members will recall that it was a decision of the Court that the original Code of Conduct could not apply to private life since the 2000 Act provided only for regulation of conduct in an official capacity. The 2007 Act now seeks to remedy that and provides that an order amending the Code may specify principles which are to apply to a person at all times. In that case, the Order must state that it is to apply at all times and can only make such provision where it prohibits particular conduct that would constitute a criminal offence. The Act permits the Code to define "official capacity" and "criminal offence".
4. Members are requested to consider the proposed responses to the questions posed by the consultation paper as set out in the Appendix 1.

Wards Affected

None

Area(s) Affected

None

Policy Implications

Please identify if this report contains any implications for the following:

Equalities and Community Cohesiveness	Yes
Crime and Fear of Crime (Section 17)	Yes
Risk Management	No
Environmental Issues	No
Economic/Financial Implications	No
Human Rights Act	No
Organisational Consequences	Yes

Supporting Documents

Appendix 1 -Proposed response to Consultation on the Review of the Member Code of Conduct

Appendix 2 - Extracts from Communities in Control: Real people, real power. Codes of Conduct for local authority members and employees. A Consultation.

Officer to Contact

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Report Template v12.5



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Appendix 2 could not be published on the Council's website. A copy may be obtained from Elaine Wood, Principal Committee Administrator, telephone 01424 451717, email ewood@hastings.gov.uk.



APPENDIX 1

PROPOSED RESPONSE TO CONSULTATION ON THE REVIEW OF THE MEMBER CODE OF CONDUCT

1. Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

The Government state that they had always intended that the Code should apply to a limited extent to conduct in a non-official capacity and continue to be of the view that certain behaviour, even when there is no direct link to the member's official role, can have an adverse effect on the level of public trust in local authority members and local government as a whole. They were encouraged by the support in response to the Standards Board consultation on the code in 2005, where it was clear that conduct in a non-official capacity was an issue that consultees considered should be covered by the Code, particularly where such conduct amounts to a criminal offence.

The proposal is to include in the second part of the restructured code, the following:- "Members must not bring their office or authority into disrepute by conduct which is a criminal offence".

Proposed response 1.

Yes, though the circumstances should be strictly limited and clearly defined, since members must be able to be "off -duty"

2. Do you agree with this definition of "criminal offence" for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

The proposed definition of criminal offence is:-

"Any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction."

The definition seeks to exclude most minor criminal offences eg minor motoring offences, parking offences and dropping litter, as well as cautions and orders falling short of a conviction by a criminal court. The type of offences they wish to catch within the definition are more serious offences such as assault, harassment, fraud and offences relating to child pornography.

Proposed response 2.



Whilst it is recognised that minor criminal offences do not have the effect of bringing the office of councillor into disrepute, nevertheless one can envisage a situation where such convictions would reflect upon the office of the member eg where the Lead Member with responsibility for parking enforcement is convicted of a number of parking offences, in an area where parking is not yet decriminalised. Likewise, whilst litter is regarded as a minor offence, fly tipping is not and it is just a matter of scale. A Lead Member with responsibility for litter control might well be considered to have brought his office into disrepute.

On the question of whether there should be a conviction before the Code impacts upon non-official conduct which amounts to a criminal offence, some consideration is necessary. Before a formal caution can be offered to an offender, there has to be an admission of guilt under caution. It may be that a formal caution has been offered to a member on a housing benefit fraud offence. The fact that there is no prosecution in no way alters the fact that the councillor has admitted to an offence, for which his Council is the responsible enforcement authority. This reflects badly on the office of councillor. There may be other cases where a prosecution for a serious does not proceed eg due to the ill-health of the main witness. Whilst it might not be possible to obtain a conviction in those circumstances, they might be sufficient evidence to prove the standards complaint on the balance of probabilities.

3. Do you agree with the definition of "official capacity" for the purpose of the members' code? If not, what other definition would you support? Please give details.

The proposed definition is "being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as representative of your authority. This repeats the wording of the scope of the existing Code of Conduct.

Proposed response 3.

This is a workable definition and is wide enough.

4. Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?

Proposed response 3.

Yes. If the conduct were of such effect on the public perception as to bring the office or authority into disrepute, it is likely that the conduct amounting to an offence abroad would also be an offence in the UK.

5. Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

Proposed response 5.

Yes, though one could envisage considerable difficulty where eg a Lead Member for Children's Services has been convicted of child pornography offences and is awaiting



the hearing of an appeal to the Court of Appeal, or even where s/he may be awaiting trial which is delayed by spurious defence applications for adjournment.

6. Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments.

To amend:-

6(a) Article 2(5) of the Local Authorities (Model Code of Conduct) Order 2007 to apply paragraph 12(2) of the Code to parish councils, ie to make it mandatory for parishes that a parish member with a prejudicial interest may only address the meeting if a member of the public were able to attend for the same purpose. Currently, this is an adoptive measure for parishes.

Proposed response 6a.

Yes in the interests of consistency.

6(b) Paragraphs 8(1)(a)(i) and (ii) be amended to make clear that the sections relates to bodies other than your authority or any committee etc of your authority.

Proposed response 6b

Yes.

6(c) Paragraph 8(1)(a) of the Code to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25 in his/her register of members' interests.

Proposed response 6c

Yes.

6(d) Paragraph 10(2) to remove the double negative, to clarify that a prejudicial interest exists where the business of your authority affects your financial position or that of a person listed in paragraph 8 of the Code or it relates to the determining of any approval, consent, licence, permission or registration in relation to you or those persons listed in paragraph 8.

Proposed response 6(d)

The Code, as it stands, provides a two stage test. Firstly, it has to be a prejudicial interest within the meaning of paragraph 10(1); secondly, once it is established to satisfy 10(1), the personal interest has to satisfy the second element of either having financial implication or that it relates to the determination of any approval etc. To maintain this two stage test, it might be necessary to preface the wording with the words "subject to sub-paragraph (1)".

6(e) Paragraph 10(2)(b) "determining" should be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.



Propose response to 6(e)

Yes.

6(f) Paragraph 10(2)(c) to clarify that a member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a member of the authority had failed to comply with the Code.

Proposed response to 6(f)

Yes, to include the member against whom the complaint is made, though Article 6 of the European Convention on Human Rights should be sufficient to protect this right to a fair and public hearing.

Other proposed drafting amendments

That paragraph 1(4) (definition of "meeting") of the Code be amended to include informal meetings of the authority, since considerable influence can be brought to bear at informal meetings and those attending may not be aware of the conflict of interest. It is suggested that paragraph 6(a) of the Code (you must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage), might make this a breach of the Code, it is after the event and does not preclude the improper influence of others and the outcome of the meeting.

That paragraph 7 be amended so that 7(1) (a) and (b) become 7(1)(i)(a) and (b) and add "(ii) officers of your authority."

That paragraph 11 (Prejudicial Interests arising in relation to Overview and Scrutiny Committees) be amended to include the following words at the end of the paragraph:- "save that, where you attend at the invitation of the Chair of the Committee to answer questions or to make representation or to give evidence, you may remain in the room for that purpose only and leave once this has been completed."

7. Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view.

Proposed response to 7.

No.

8. Are there any aspects of conduct in the members' official capacity not specified in the members' code that should be included? Please give details.

Proposed response to 8.

No.



9. Does the prescribed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?

Proposed response to 9.

Yes.

Proposed amendments to the General Principles

10. Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

The Government wishes to amend the Relevant Authorities (General Principles) Order 2001, which sets out the ten General Principles which underpin the provisions of the members' code, to distinguish between the two parts of the proposed new code, that governing conduct in an official capacity and that in a non-official capacity. It is proposed to add a further principle relating to conduct in private life, as follows:-

Duty to Abide by the Law

Members should not engage in conduct which constitutes a criminal offence.

Proposed response to 10.

It is questionable whether this is necessary, since the duty to uphold the law is an existing principle, albeit that the existing principle is a positive obligation and the new principle is no greater a requirement than is imposed on all who are subject to the criminal law.

11. Do you agree with this broad definition of "criminal offence" for the purpose of the General Principles Order? Or do you consider that "criminal offence" should be defined differently?

Proposed response to 11.

See proposed response to question 2 above.

12. Do you agree with this definition of "official capacity" for the purpose of the General Principles Order?

Proposed response to 12.

yes

