



ISLINGTON

Law and Public Services
Town Hall, Upper Street, London N1 2UD

Report of : Director of Law and Public Services

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	19 th April 2005	7	

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Subject: Review of the Code of Conduct for Members

1. Synopsis

The purpose of this report is to seek the Committee's views on the consultation currently being carried out by the Standards Board on the Review of the Code of Conduct for Members. This report makes some suggested responses upon which Members' views are sought.

2. Recommendation

To agree that the responses to the consultation questions set out in the report be submitted to Corporate Services Committee for onward submission to the Standards Board for England, with such amendments as Members may consider appropriate.

3. Background

The Code of Conduct has now been in force since May 2002 and Committee Members have received regular updates on its implementation. The Standards Board is currently consulting on a review of the Code and a copy of their consultation document is attached as Appendix 'A'. The response to the consultation must be submitted by 17th June and the views of Members of the Committee are sought on the recommendations and questions raised. This matter will also go to Corporate Services who will be able to approve the final version with the benefit of advice from the Standards Committee.

4. Detail

Set out below are the questions raised by the consultation with Officers' suggested responses in respect of them.

(1) Should the 10 general principles be incorporated as a preamble to the Code of Conduct?

The 10 general principles are set out on pages 9 and 10 of the consultation document. The suggestion is simply that they be included as a preamble not that breach of them become an offence in itself. In the sense that this sets the context for the Code of Conduct, their inclusion would seem sensible.

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

It is considered that the 10 general principles are sufficiently broadly drafted to encompass all matters which might be included.

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

The Standards Board considers that the current definition of respect is sufficiently broad to allow those people making judgements as to whether a person has treated another person with disrespect to use their discretion and take into account the circumstances surrounding the incident concerned. This seems to be a sensible approach.

(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?

The ACAS definition is:-

"Bullying may be characterised as a pattern of offences intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine an individual or a group of individuals, gradually eroding their confidence and capability which may cause them to suffer stress."

If it were to be considered necessary to include a specific provision on bullying, this definition would appear to be a sensible one. The argument for including it in the first place put forward by the Standards Board is that including a specific provision will "be of significant, symbolic and practical value to the Local Government community, as it will show that bullying is an issue which should be specifically dealt with". This is a finely balanced argument upon which Members' views are sought.

(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?

Currently under paragraph 3 of the Code a Member must not disclose information given in confidence by any one or which is of a confidential nature without the consent of the person giving it to them or unless required by law to do so. It is argued that this has put Members in some difficulties where they genuinely believe that the disclosure of the information is in the public interest. Both the law relating to Freedom of Information and Data Protection allow for a weighing of the public interest and it is permissible even under

the Data Protection Act to disclose confidential personal information if it is in the vital interests of another. What is required in all circumstances is for a careful balancing act to take place of the Member concerned to be sure (which may mean taking advice) that the disclosure is necessary in the public interest or, for instance, for the prevention of crime. It would therefore seem sensible to make explicit reference to this test in the code.

- (6) Do you think that 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 had withheld unlawfully?**

This question assumes the information is information actually in the possession of the authority as opposed to the member personally and seems to be superfluous. It would be to include an express clause allowing the member to disclose information when he or she considers that the Council is withholding it unlawfully as this puts the member in the position of having to make their own judgements in issues of legality and one would encourage members not to simply disclose council help information without first pursuing the matter at the highest levels within the authority.

- (7) Should the provision relating to disrepute be limited to activities undertaken in a Member's official capacity or should it continue to apply in certain activities in the Member's private life?**

The Standards Board recommends that the Code should continue to have application to a Member's private life where his or her behaviour is such as to bring the Council into disrepute and this seems a sensible approach.

- (8) If this is to remain the approach, 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?**

Although restricting the finding of a breach of the Code to situations where criminal conduct has been formally sanctioned or at least acknowledged would have the benefit of clarity, it would seem to leave out that behaviour which, whilst not constituting a criminal offence, is such as to affect the Council's reputation. Therefore there is certainly an argument against not narrowing the scope of this clause.

- (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?**

This proposition seems inarguable but it seems to be the case at the moment that the Code already implicitly prevents such breaches. The Standards Board is considering issuing a model protocol for the use of resources by Members which would certainly assist particularly in the difficult area of when it is appropriate to use computer and telephone equipment provided by the authority. Provided this protocol was complied with, a Member would not be in breach of the Code.

- (10) If so, how could be define inappropriate political purposes?**

This is a much harder question. The Code currently allows resources to be used for political purposes if such use "could reasonably be regarded as likely to facilitate, or be conducive to, the discharge of the functions of the authority or the office to which the Member has been elected". It is difficult to see how a form of wording could be drawn up

to deal with what might be regarded as “inappropriate” and this should continue to be judged on its merits from time to time.

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

In their consultation document the Standards Board points out that many authorities allow councillors to use computer equipment provided by the Council for their own personal work. It is certainly arguable that to do so incurs no further costs on the part of the authority and ought to be permitted. However, as the Code already provides that there would only be a breach of the Code should the use of resources be incompatible with the authority’s guidance, this could be dealt with by drawing up a protocol making clear what is and is not an appropriate use of resources supplied to Members. Accordingly, there would seem to be little value in codifying a distinction.

(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, removed altogether or somehow narrowed?

The consultation document points out that this requirement can lead to reports being made to the Standards Board even when the matter has been resolved and there would therefore seem to be an argument to modify this provision from its currently blanket application.

(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.

The consultation document suggests that the duty to report breaches by fellow Members should be re-written as follows:-

“A Member must, if he or she knows or is informed of any breach of the Code of Conduct by another Member which he or she:

- (a) reasonably believes to be serious or significant, or
- (b) on the basis of the facts known to them at the time, should reasonably have concluded to be serious or significant;

make a written allegation to that effect to the Standards Board for England as soon as it is practicable for him or her to do so.”

A narrowing of the requirement to report breaches to situations where they are serious certainly seems to be an improvement on the current position. It may also be appropriate to restrict the duty to report conduct on the part of the Member to that occurring in their public rather than private capacity.

(14) Should there be a provision about making false, malicious or politically motivated allegations?

This does not appear to have a particular problem in this authority and it is arguable that the provision prohibiting a Member from bringing the Council into disrepute would cover the situation of bringing repeated or malicious allegations.

- (15) Does the Code need to need to provide effective protection for complaints against intimidation, or do existing sections of the Code of Conduct and other current legislation already cover this area adequately?**

Again, the provision prohibiting the Member from bring the Council into disrepute would appear to cover this activity as would the provisions in relation to whistle blowing already incorporated in the employee Code of Conduct and in statute.

- (16) Do you think the term “friend” requires further definition in the Code of Conduct?**

Whilst it is true to say that the word friend is certainly open to a number of interpretations, it is difficult to see how reducing it to a few words will improve the position. The guidance previously issued defined a friend as “someone well known to another and regarded with liking, affection and loyalty by that person. Friendship implies a closer relationship than a mere acquaintance.” This seems so obvious as to take matters little further.

- (17) Should the personal interest test be narrowed so that Members do not have to declare interest shared by a substantial number of other inhabitants in an authority’s area?**

This proposal is designed to address the situation where a person would have to declare a personal interest shared by a substantial number of other people albeit that those people were still a minority of inhabitants of the area. It would therefore seem sensible to provide that personal interests would not arise in such circumstances.

- (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?**

To an extent this is already the situation in relation to the exemptions afforded under Paragraph 10(a) to (c) of the Code but these provisions could certainly withstand clarification.

- (19) If so, do you think that public service interests which are not prejudicial and which appear in the Public Register of Interest should have to be declared at meetings?**

The consultation suggests that provided that these interests were in the Register, they need not be declared at a meeting so long as they were not prejudicial. Officers do not agree with this suggestion as it is in the interests of openness and transparency that at the meeting concerned people are aware of interests even if they are not prejudicial.

- (20) Do you think that 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**

This proposal is being put forward because the ability to rely on the exemptions (which relate to interests in another relevant authority, another public authority and a body to which the Council has appointed the Member) is only a permissive one. In other words, although a Member may choose to rely on this exemption, he or she is not obliged to do so. The consultation document proposes that where a Member has a public service interest, it should only be treated as prejudicial if:-

- (a) the matter has a direct impact on the body concerned (for example, a grant of money);

- (b) where the Member is involved in regulatory matters in a decision making capacity (e.g. Planning and Licensing).

This attempt to make the rules less stringent for public service interests is to be welcomed although it is arguable that in any event a decision which would not have a direct impact on a public service body is unlikely to be prejudicial even under the current provisions. Even with the suggested amendments, the application of the Code will continue to require a degree of sensitive interpretation by Members.

(22) Should Members with a prejudicial interest in the matter under discussion be allowed to address the meeting before withdrawing?

This issue has arisen in relation to the decision in the Richardson case in which the Court held that a person may not stay in the room, even in their personal capacity, once a prejudicial interest arises. This applies whether or not the Member is actually a member of the Committee considering the matter. This is on the basis that the presence of the person in the room is of itself likely to influence the decision, whether or not that person actually votes on it. The consultation paper proposes that the current position remain unchanged and that the Member not be allowed to remain in the room and this does seem to be a logical approach.

(23) Do you think Members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?

It is not entirely clear why the position should be different in relation to public service interests given that there is already a proposal to limit the situations in which these can become prejudicial in the first place.

(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?

In the past, there has been some reluctance on the part of Members to include details of such employment in the Register and the Standards Board has not pursued cases where complaints are made that they have not done so. The suggestion that Members ought to be able to obtain a dispensation from the Monitoring Officer is a sensible one.

(24) 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?

Currently Members are required to register membership of charities, bodies whose principal purposes include the influence of public opinion or policy and trade union or professional associations. This would probably not include social clubs but the consultation document suggests that membership of them can lead to influence and conflicts of interest in certain circumstances. It would therefore seem sensible to require membership of these to be registered too, but only where they are of local significance.

(26) Should the Code of Conduct require that the Register of Gifts and Hospitality be made publicly available?

There seems no logical reason why this information should not be made public, given that the gifts required to be registered are only those made in the course of official business and not personal gifts.

(27) Should Members also need to declare offers of gifts and hospitality that are declined?

The District Auditor recently carried out a review of gifts and hospitality registration amongst officers and has recommended that offers declined ought also to be registered, as they could be an indication that attempts are being made to tout for business. It would seem sensible to bring this into line for Members as long as only offers of those gifts with an estimated value exceeding £25 need to be recorded.

(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?

In principle this seems sensible and perhaps the trigger point for registration could be the third such gift.

(29) Is £25 an appropriate threshold for the declaration of gifts and hospitality.

Yes.

5. Conclusion

Members will note that a significant number of alterations are being proposed to the Code, perhaps the most significant of which relate to Declaration of Registrations of Personal and Prejudicial Interests. The clarification of the provisions in this area would be welcomed so as to allow Members who are involved in a number of public bodies to participate more fully in Council life. Members are asked to consider whether they agree with the suggested responses to the consultation document and to ask the Monitoring Office to make their views known to Corporate Services Committee when it considers the matter.

Background papers:

Final Report Clearance

Signed by

Director of Law and Public Services

Date

Received by

Head of Scrutiny and Democratic Services

Date

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