



Report of: Director of Corporate Resources

Meeting of	Date	Agenda Item	Ward(s)
Standards Committee	21 October 2008	8	

Delete appropriate	as	Exempt	Non-exempt
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Subject: Codes of conduct for local authority members and employees- CLG Consultation Process

1. Synopsis

Communities and Local Government (CLG) have issued a consultation paper entitled "Communities in Control: Real people, real power – Codes of Conduct for local authority members and employees". This report summarises the issues raised in the consultation paper and invites members comments on the specific questions to which responses are sought by CLG.

2. Recommendations

- 2.1 To agree, with such amendments as members consider appropriate, the responses to the consultation questions concerning the Members Code of Conduct set out in the report for submission to Communities and Local Government.
- 2.2 To consider and comment upon the consultation questions concerning the proposed employees' code of conduct.

3. Background

- 3.1 Communities and Local Government issued a consultation paper at the start of October concerning potential revisions to the Members Code of Conduct and concerning a proposed employees' code of conduct. The paper is appended to this report

3.2 The paper seeks responses to 22 specific questions. 12 of these relate to the Members Code of Conduct and the remainder to the proposed employees code of conduct.

3.3 **Members Code of Conduct** - It is proposed that the Code of Conduct be restructured to create two distinct sections, one covering conduct in a member's official capacity and the other to cover conduct not in the member's official capacity. The consultation questions in respect of the Members Code of Conduct are set out below with officers' suggested responses in respect of them.

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

Yes. Including provisions in the Code to cover criminal conduct in a member's non-official capacity is appropriate to maintain public trust and confidence in their local council.

Question 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 definition "any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity to pay a fixed penalty instead of facing a criminal conviction" would mean that where a police caution is issued (which requires the person concerned to have admitted the offence) instead of a prosecution taking place the Code would not apply. This could lead to the same conduct sometimes being subject to the Code and sometimes not. It is therefore considered that it may be appropriate for police cautions to be included as well as actual convictions.

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

Yes. The proposed definition differs in substance from the existing definition only in that it refers to being "engaged in" rather than "conducting" the business of the authority, which is slightly broader.

Question 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?

Yes, otherwise the same conduct would sometimes be subject to the Code and sometimes not. It should not matter whether the conviction is in this country or abroad. There may be definitional problems in deciding whether the offence abroad is in fact equivalent to the UK offence.

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

It is not clear from the consultation paper whether this would only apply in the case of conduct not in the member's official capacity. Where the conduct is in the member's official capacity it may be that a breach of a provision of the Code can be established without the need to reach a view as to whether a criminal offence has been committed. In such a case, provided the ethical investigation can continue at the same time as the criminal investigation without prejudicing it, it should be possible (subject to local discretion) for the breach of the Code to be addressed. If this is not the case it may mean that members potentially guilty of very serious breaches in their official capacity cannot be held to account for a lengthy period of time.

Question 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?

It is agreed that all the suggested amendments would be helpful. In the case of the proposal to amend 10(2) to clarify that a member would not have a prejudicial interest where the business relates to giving evidence to a standards committee regarding an alleged breach of the Code, it is suggested that in the case of the subject member this should be worded so as to enable that member to remain at the hearing not just to give their own evidence but to hear the entire proceedings, other than the deliberations of the committee.

Question 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?

No.

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

No.

Question 9 - Does the proposed 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?

Yes.

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

Yes.

Question 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?

Yes.

Question 12 - Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Yes.

- 3.4 **Employees' code of conduct** - The remaining 9 questions relate to the proposed employees code of conduct. Members of the Standards Committee are invited to contribute their views concerning this aspect of the consultation paper so that they can be taken into account, along with comments from other relevant council bodies and individuals, by officers in preparing a response on this aspect of the consultation paper.
- 3.5 Islington already has a code of conduct for its employees, which is quite detailed. The consultation paper envisages that the mandatory code it proposes should be incorporated into the terms and conditions of employment of local authority staff and would not constrain authorities from developing their own codes to supplement the statutory code. The proposed code would be a two tier model with some provisions applying to all employees and some only to "qualifying employees" who might be defined by their seniority in the authority or may be all those who exercise delegated powers.
- 3.6 The following consultation questions are contained in the consultation paper and members of the committee are asked for their observations so these can be recorded and taken into account by council officers preparing a response to this part of the consultation paper along with comments from other relevant council bodies and individuals:

Question 13 - Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

Question 14 - Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

It is proposed that employees who are covered by their own professional codes should not be covered by the proposed new code.

Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?

Question 16 - Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?

The proposed core values are set out on pages 20 -21 of the consultation paper.

Question 17 - Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?

The "political restriction" style model would designate a level of seniority at which certain aspects of the code would apply. The delegation model would apply aspects of the code to those officers who exercise formal delegated power. The additional values for these officers are at page 22 of the consultation paper.

Question 18 - Should the code contain a requirement for qualifying employees to publicly register any interests?

Question 19 - Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

The registration requirements are at page 22-23.

Question 20 - Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?

Question 21 - Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Question 22 - Should the employees' code extend to employees of parish councils?

Conclusion and recommendations

- 3.7 Members are invited to consider and comment on the proposed responses to the consultation paper and to agree a response to the consultation in respect of the Members Code of Conduct.

Final report clearance

Signed by
Director of Corporate Resources Date

Received by
Head of Democratic Services Date

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