



# Epping Forest District Council

## **STANDARDS COMMITTEE** **Tuesday, 27th February, 2007**

**Place:** Civic Offices, High Street, Epping

**Room:** Committee Room 1

**Time:** 7.30 pm

**Committee Secretary:** G Lunnun, Research and Democratic Services  
Tel: 01992 564244 Email: glunnun@eppingforestdc.gov.uk

### **Members:**

Dr D Hawes (Chairman), Ms M Marshall, G Weltch, Councillors Mrs D Borton and Mrs P Smith

### **Parish/Town Council Deputy Representative(s):**

Councillors J Salter, B Surtees (Deputy)

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#### **1. APOLOGIES FOR ABSENCE**

#### **2. MINUTES (Pages 5 - 8)**

To approve as a correct record the minutes of the meeting held on 14 November 2006 (attached).

#### **3. DECLARATIONS OF INTEREST**

To declare interests in any item on the agenda.

#### **4. CODE OF CONDUCT - APPLICATION (Pages 9 - 12)**

(Monitoring Officer) To note the attached advice from the Standards Board following the High Court decision in the Livingstone case.

#### **5. CODE OF CONDUCT - CONSULTATION ON REVISED MODEL (Pages 13 - 24)**

**Recommendation;****To consider the draft revised Code of Conduct and to authorise the Monitoring Officer to respond to the consultation as considered appropriate.**

(Monitoring Officer) Members of the Committee were sent on 6 February 2007, a copy of a letter from the Department for Communities and Local Government together with a copy of the consultation paper which seeks views on a draft of a proposed new model Code of Conduct for local authority members.

Attached is a briefing note prepared by the Association of Council Secretaries and Solicitors on the draft revised Code which seeks to identify the relaxations from the current Code and the additional obligations. The briefing note includes comments in bold italics which may help members in their discussion on this matter. Also attached is a briefing from the Local Government Information Unit which highlights and comments on issues.

The list of the specific questions on which the Government would welcome views is also attached.

**6. PLANNING PROTOCOL - REVISION (Pages 25 - 28)**

1 (Monitoring Officer) At the last meeting, it was agreed that changes should be made to the Planning Protocol regarding planning applications made by officers and members and the role of Area Plans Sub Committee Chairmen if a planning matter is referred on to the District Development Control Committee.

2. Councillor Wright, members of the Committee and the Head of Planning Services have all commented on the proposed revisions. A revised draft is now submitted so that it may be recommended to the Council and Parish/Town Councils for adoption.

3. One significant development since the last meeting relates to the form for notifying member/officer status and of any relationship to any member of the Council. The Committee was keen to ensure that a form should be sent to any applicant so as to prompt them to disclose this matters but the Government has now prescribed its own form which deals with the point. The revised draft reflects this.

**7. ALLEGATIONS ABOUT THE CONDUCT OF DISTRICT AND PARISH/TOWN COUNCILLORS - CURRENT POSITION (Pages 29 - 30)**

(Monitoring Officer) To note the attached schedule.

**8. DATES OF FUTURE MEETINGS**

(Monitoring Officer) The calendar for 2006/07 provides for a meeting of the Committee on 25 April 2007.

Additional meetings can be arranged as and when required by the Committee.

The Council's draft calendar of meetings for 2007/08 provides for meetings of the Committee on 17 July 2007, 16 October 2007, 26 February 2008 and 22 April 2008.

## 9. EXCLUSION OF PUBLIC AND PRESS

To consider whether, under Section 100(A)(4) of the Local Government Act 1972, the public and press should be excluded from the meeting for the items of business set out below on grounds that they will involve the likely disclosure of exempt information as defined in the paragraph(s) of Part 1 of Schedule 12A of the Act indicated:

<b>Agenda Item No</b>	<b>Subject</b>	<b>Exempt Information Paragraph Number</b>
Nil	Nil	

To resolve that the press and public be excluded from the meeting during the consideration of the following items which are confidential under Section 100(A)(2) of the Local Government Act 1972:

<b>Agenda Item No</b>	<b>Subject</b>
Nil	Nil

Paragraph 9 of the Council Procedure Rules contained in the Constitution require:

- (1) All business of the Council requiring to be transacted in the presence of the press and public to be completed by 10.00 p.m. at the latest.
- (2) At the time appointed under (1) above, the Chairman shall permit the completion of debate on any item still under consideration, and at his or her discretion, any other remaining business whereupon the Council shall proceed to exclude the public and press.
- (3) Any public business remaining to be dealt with shall be deferred until after the completion of the private part of the meeting, including items submitted for report rather than decision.

**Background Papers:** Paragraph 8 of the Access to Information Procedure Rules of the Constitution define background papers as being documents relating to the subject matter of the report which in the Proper Officer's opinion:

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) have been relied on to a material extent in preparing the report does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of executive reports, the advice of any political advisor.

Inspection of background papers may be arranged by contacting the officer responsible for the item.

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## **EPPING FOREST DISTRICT COUNCIL COMMITTEE MINUTES**

**Committee:** Standards Committee **Date:** 14 November 2006

**Place:** Committee Room 2, Civic Offices, High Street, Epping **Time:** 7.30 - 7.50 pm

**Members Present:** Dr D Hawes (Chairman), Ms M Marshall, G Weltch, Councillors Mrs D Borton, Mrs P Smith, J Salter and B Surtees

**Other Councillors:**

**Apologies:**

**Officers Present:** G Lunnun (Allegations Determination Manager) and C O'Boyle (Monitoring Officer)

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### **19. COUNCILLOR K PERCY**

It was with much sadness that the Chairman informed the Committee of the death of Parish Councillor Ken Percy who had served as the Parish/Council deputy representative since the Committee had been formed in 2001.

There was a minute's silence in tribute to Councillor Percy.

### **20. PARISH/TOWN COUNCIL DEPUTY REPRESENTATIVE**

The Chairman welcomed Councillor Brian Surtees attending his first meeting as the Parish/Town Council deputy representative.

### **21. MINUTES**

#### **RESOLVED:**

That minutes of the meeting of the Committee held on 17 October 2006 be taken as read and signed by the Chairman as a correct record.

### **22. DECLARATIONS OF INTEREST**

Mr G Lunnun, the Allegations Determination Manager, reported that he would be unable to assist the Committee in relation to agenda item 8 (Appointment of Adjudication Sub-Committee) as he had provided evidence to the Investigating Officer and therefore had a conflict of interest.

The Monitoring Officer reported that steps had been taken to provide cover for the Allegations Determination Manager at the Sub-Committee meeting.

**23. ADJUDICATION SUB-COMMITTEE - MINUTES****RESOLVED:**

That the minutes of the following meetings of the Adjudication Sub-Committee be taken as read and signed by the relevant Chairman as a correct record:

20 September 2005  
8 December 2005  
5 September 2006.

**24. DATES OF FUTURE MEETINGS**

The Committee noted the calendar for 2006/07 provided for meetings of the Committee on 27 February 2007 and 25 April 2007.

**25. EXCLUSION OF PUBLIC AND PRESS****RESOLVED:**

That the public and press be excluded from the meeting for the items of business set out below on the grounds that they would involve the likely disclosure of exempt information as defined in the paragraphs of Part 1 of Schedule 12A of the Local Government Act 1972 and that maintaining the exemption is considered to outweigh the potential public interest in disclosing the information:

<b><u>Agenda Item No.</u></b>	<b><u>Subject</u></b>	<b><u>Exempt Information Paragraph Number</u></b>
7.	Allegation SBE 15017.06	7C
8.	Appointment of Adjudication Sub-Committee	7C

**26. ALLEGATION SBE 15017.06**

The Allegations Determination Manager advised that an allegation had been made against Councillor J Knapman that he had failed to comply with the District Council's Code of Conduct. The details of the allegation were:

- (a) in not acknowledging or replying to a petition for a year, the councillor had failed to treat people with respect;
- (b) residents of The Uplands, Loughton had not received a letter drop as reported to the Cabinet meeting held on 12 July 2004 which had been chaired by the councillor.

The Committee noted that in accordance with Section 60(2) of the Local Government Act 2000, the matter had been referred by the Standards Board for England to the District Council's Monitoring Officer for investigation. The investigation had been undertaken by the Council's Deputy Monitoring Officer who had found that there had been no breach of the Code the Conduct.

The Committee were advised that at this meeting they should simply consider the report of the Deputy Monitoring Officer and decide whether, based on the facts set

out in the report, they agreed with the findings of the Deputy Monitoring Officer or believed that there was a case for Councillor Knapman to answer.

The meeting noted that if the Committee agreed that there had been no breach of the Code of Conduct, a notice would be published of their findings. The member involved would be entitled at that stage to ask that the notice not be passed to local newspapers. However, if the Committee found that there was a case to answer it would be necessary to appoint an Adjudication Sub-Committee to consider the matter in detail.

The Committee considered the report of the Deputy Monitoring Officer. The Committee agreed that although the complainant, and through him residents of The Uplands, had not received the usual courtesy of replies to correspondence, that had not been as a result of any intentional or unintentional disrespect on the part of Councillor Knapman. Councillor Knapman had expected the correspondence to be dealt with by officers of the District Council and Essex County Council without any further need for intervention by himself. It also appeared that officers of the District Council, in transferring details of the complainant's concerns to the County Council may have felt that the latter would deal with the replies.

Although finding that Councillor Knapman had not breached the Code of Conduct, the Committee concluded that in their view, it would be appropriate for Councillor Knapman to apologise to the complainant for the oversight in not ensuring that replies were sent to all of his queries. The Committee also concluded that it would be appropriate to issue a general reminder to all members of the Council on best practice for dealing with correspondence addressed to them personally.

**RESOLVED:**

- (1) That, based on the facts set out in the Deputy Monitoring Officer's report, there has been no breach of the Code of Conduct in this matter and no action needs to be taken on matters which were the subject of the investigation;
- (2) That Councillor Knapman be approached for his views on the publication of a notice in local newspapers;
- (3) That having regard to the circumstances of the case, Councillor Knapman be asked to consider sending a letter of apology to the complainant; and
- (4) That the officers draft, for approval by the Chairman of the Committee, a note to be sent to all members of the Council advising on best practice for dealing with correspondence which they receive personally as councillors.

**27. APPOINTMENT OF ADJUDICATION SUB-COMMITTEE**

The Committee noted the final report of the Deputy Monitoring Officer who had investigated an allegation made about the conduct of District Councillor M Woollard.

The Investigating Officer's finding was that there had been a breach of the Code of Conduct in this case and it was necessary, therefore for the Committee to appoint an Adjudication Sub-Committee of three members to consider the matter in detail.

Members considered the make-up of a Sub-Committee.

**RESOLVED:**

(1) That Dr D Hawes, Councillor Mrs P Smith and Councillor J Salter form the Adjudication Sub-Committee to adjudicate on allegation SBE 15247.06 (formerly SBE 14652.06) referred to the Council's Monitoring Officer and investigated locally;

(2) That Dr D Hawes be appointed Chairman of the Adjudication Sub-Committee; and

(3) That arrangements be made for a meeting of the Sub-Committee to be held during January 2007.

**28. INVESTIGATIONS AND PRESENTATION OF INVESTIGATOR'S REPORTS**

The Monitoring Officer reported that she had recently attended a seminar organised by the Association of County Secretaries and Solicitors at which there had been a presentation by a solicitor who presented reports to Standards Committees following investigations by an ex police officer employed by him. The meeting noted that the costs of this service were considerably less than estimates which the Monitoring Officer had previously obtained and this would provide a further option for consideration in cases when the Council's officers had a conflict of interest and were unable to perform their allocated roles.

**CHAIRMAN**



## THE IMPLICATIONS OF THE DECISION OF COLLINS J IN THE LIVINGSTONE CASE

Following the High Court decision in the Livingstone case a more restrictive view needs to be taken of when the Code of Conduct can apply to the actions of a member.

There are two provisions of the code that apply not just when a member is acting "*in his official capacity*" but also "*in any other circumstances*." These are paragraphs 4 (bringing your office or authority into disrepute) and 5(a) (improperly using your position to secure or confer an advantage or disadvantage).

However, the interpretation of the words "*or in any other circumstances*" already limited by the Adjudication Panel for England in earlier cases has now been replaced by a much stricter interpretation arising from the decision of Collins J.

He found that "*any other circumstances*" is limited to situations where the member is "performing his functions." He added that the words "*performing his functions*" extend to actions beyond those carried out in a member's "official capacity."

Collins J went on to state that if Parliament wished to regulate the activities of members in their private life it needed to do so explicitly. He expressed the view that unlawful conduct was not necessarily covered and that a councillor convicted of shoplifting or drunken driving was not caught by the code if the offending had nothing to do with their position as a councillor.

He also found that as a consequence of the Human Rights Act the code could not interfere with members who express themselves forcibly using language that is inappropriate, intemperate or offensive so long as it is in their private life.

In relation to establishing disrepute Collins J stated that there was a "*real distinction between the man and the office*" and expressed the view that private capacity conduct will rarely be capable of bringing a member's office or authority into disrepute even if considered inappropriate, outrageous or unlawful. He found that while Ken Livingstone's comments may have tarnished his own reputation they did not tarnish the reputation of his office or authority. Collins J also cited conviction for theft and sexual misconduct as examples where the reputation of the office was not necessarily brought into disrepute.

Since the judgment the Board has been working with Government, the Adjudication Panel for England and ACSeS to clarify the scope of the Code, how cases should be handled at the present time, and whether the position should be rectified by future legislation.

In the light of the judgment, the Government has included proposals in the current Local Government and Public Involvement in Health Bill to make clear that the Code of Conduct is not limited to actions taken only in an official capacity and to delete the words "in performing his functions" from section 52. However, until that legislation, if enacted, comes into force we need to apply the law as declared by Mr Justice Collins.

The Standards Board for England is therefore issuing this guidance to set out the position, as the Board currently understands it. However readers should be mindful that while some aspects of the decision are very clear others are not. Therefore each case is likely to turn on its own facts.

The following principles emerge from the decision about cases where a member is not acting in an official capacity: -

1. For the code to apply, it will need to be established that, if the member was not acting in an official capacity, he or she had nonetheless used or sought to use his or her “status” as a member of the council. An example may be where a councillor, in dispute with a neighbour about their planning application, threatens to speak to colleagues on the planning committee. This relates to the wording in section 52 of the Local Government Act 2000, i.e. the “performing his functions” test (commonly known as the “using one’s position” test).
2. The second principle is that the use of the status must be of a type that is capable of amounting to a failure to comply with the code. An example would be where a councillor attended a private pre-meeting to discuss a report, which included a proposal to purchase some land for the council to redevelop new council offices, and then, immediately after the meeting, the member contacted the owner and anonymously agreed to buy the property for the price quoted to the council.
3. The third principle relates to establishing disrepute to his or her office or the authority. Under this test a case tribunal or standards committee will need to be persuaded that the misconduct is such as to damage the reputation of the member’s “office or authority” as opposed simply to damaging the reputation of the individual concerned.

It should be noted that the parameters of this test are far from clear because Collins J gave no indication of how it could be met in practice. What is clear from the Collins decision and from subsequent discussions with the President of the Adjudication Panel is that the bar will be set quite high. Therefore the test will not be easy to meet.

However the Standards Board believes that some of the considerations that might tip the balance in favour of disrepute to the office of member or to the authority in particular cases are: -

- a. situations where the member has put his or her private interests over and above the public interest, and therefore reduced the standing of his office, that is flouting public interest for private gain, for example by using their position to secure a personal profit
- b. similarly situations where a member defies important and well established rules of the authority for private gain; also
- c. where a member engages in conduct which directly and significantly undermines the authority’s reputation as a good employer or responsible service provider

It must be reiterated that these examples are not exhaustive and each case should be treated on its particular facts. In future, therefore, any case involving an allegation that a breach of paragraph 4 of the Code of Conduct has taken place when the member was not acting in an official capacity will need to be carefully scrutinised. In doing so, it will be necessary to establish whether or not the action complained of was carried out as a member or by reference to the capacity of member. Careful thought will also need to go into establishing how the action complained of does more than just bring the individual into disrepute.

Further advice on particular cases may be obtained from the Standards Board's Legal Department. Please ring 020 7378 5091 and your call will be allocated to a lawyer.

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## Revised Model Code of conduct for Local Authority Members

### Introduction

1. The draft Regulations involve the production of a single model code (rather than the four current models) with provision in the Regulations for non-relevant provisions for different authorities to be non-mandatory. It will therefore be necessary for each authority to adjust the model by deleting the non-mandatory elements relating to it, prior to adopting, rather than simply adopting the entire code.

***(Para 2(3) of the draft revised code appears to have been excluded from this drafting device, but presumably can also be omitted from all codes other than those of police authorities and the Metropolitan Police Authority, as being inapplicable to them).***

2. One affect of this seems to be that the Standards Board (SBE) and the Adjudication Panel for England (APE) will need, in the future, to refer to the authority's actual code, rather than the relevant model, in dealing with cases.

3. The draft revised code seems to be drafted to avoid the need for further revision when the provisions of the Local Government and Public Involvement in Health Bill are applied (extend to behaviour outside official capacity).

### Intention

4. The draft revised code seeks to:

- Reflect the recommendations of the SBE following the review.
- Reflect APE and High Court decisions on interpretation ( discrimination, private capacity, disclosure in public interest )
- Modify the effect of the Richardson decision to allow a member to make representations whilst having a prejudicial interest.
- Extends the application of the code to the GLA.
- Improve the structure and drafting of the code. ***(Definitions at the front. Part 2 of the draft revised code is reconstructed to firstly define personal interests and then to deal with disclosure, avoiding the difficult cross referencing in the current code. The wording of some interests is adjusted to accommodate this structural change).***
- Be gender neutral. ***(It would be even less clumsy and reduce the number of words if put in the second person 'you', 'your'; most other codes are expressed this way)***
- Improve some definitions.

### Relaxations

5. The draft revised code provides a number of relaxations from the requirements of the current code:

- Modifies the obligation to promote equality and not to unlawfully discriminate. -2(2)(a)
- Applies an additional limitation to the obligation not to disclose confidential information (reasonable and in public interest, in good faith and not in breach

- of reasonable requirements). -3((a)(iii). ***This appears to be designed as a separate test to that under the FOI Act so that APE can adjudicate on it.***
- Removes the obligation to report allegations of failure to comply with the code. (current Code paragraph 7).
  - Modifies the well-being interest to relate only to the ward (where applicable) rather than the whole of the authority's area. -7(c) ***(This dispensation will not assist most parish councillors. It presumably applies to joint committees, but it is not entirely clear how it applies to local authority members on police and fire authorities).***
  - Limits the obligation to disclose a personal interest of a family member, friend or person having close personal association to those that the member is aware of, or ought reasonably to be aware of. -8(4) ***(Presumably these interests were not registered under the current code on account of the member not being aware of them, but the excuse would now have legal validity! But what should a member do to meet the reasonable test?)***
  - Makes provision for sensitive interests to be excluded from the public register in very limited circumstances and for the sensitive information to be not disclosed when the interest is disclosed. -8(5) and 13 ***( 'creates or is likely to create a serious risk of' .. 'violence or intimidation' seems to be too narrow to be of much value. Members may wish to seek a wider effect to this provision.)***
  - Creates a new category of public service interest as to membership of other relevant ***(meaning?)*** authority, public authority or body the member is appointed to by the authority. -8(7) The interest need only be disclosed when the member addresses the meeting.-8(2) ***( It may seem odd to a member of the public for one member disclosing an interest and another not (because s/he did not speak), when both take part in the decision by voting. Does this relaxation have any real value?)*** A public service interest is not a prejudicial interest except in the limited circumstances of relating to the financial affairs of the body or the determining of any approval, consent, licence, permission or registration. -9(2)(a)(i) and (ii) ***(Monitoring Officers will need to be mindful also as to the possibility of bias in the case of members with public service interests participating in decisions under this general exemption. A public service interest, for the purposes of the prejudicial interest provisions, is extended to include an interest in a charity, a lobbying or philanthropic body of which the member is a member. -9(4) (The way this is drafted is not ideal and the risk of bias is not provided for).***
  - Broadens the dispensation relating to housing by excluding the reference to rent arrears. -9(2)(b)(i)
  - Creates additional dispensation for LGA2000 indemnities under S101. -9(2)(b)(v)
  - Creates additional dispensation as to bestowing title of freeman -9(2)(b)(vi)
  - Creates additional dispensation for setting council tax under LGFA 1992. -9(2)(b)(vii) ***(Does not appear to apply to setting precepts.)***
  - Provides for a member, otherwise having a prejudicial interest, to attend a meeting for the purpose of making representations, answering questions or giving evidence, provided the meeting agrees and subject to the member withdrawing after so doing. -9(3) ***(not absolutely clear, but presumably a personal interest still needs to be disclosed by the member. Meetings will require careful managing to ensure such members are excluded from the decision making part of the meeting. The wording and meaning is different to the similar provision relating to attendance at scrutiny committees.)***

- Clarifies the provisions on interests at overview and scrutiny committees generally and limits the definition of prejudicial interest to the circumstances of membership of the executive or other committee at the time of the decision and presence of the member when the decision was made.

### **Additional obligations**

6. The draft revised code imposes the following additional obligations on members:

- Not to bully any person -2(b)
- Not to intimidate a person involved in proceedings under the code -2(c)
- Extends criminal offence disrepute to offences committed before taking office but conviction after taking office. -4(2)
- Extends the improper influence provisions to include attempt.-5(a)
- Extends meaning of political purposes in the use of the authority's resources provision to specifically include 'party political purposes'.
- Extends the provision on use of the authority's resources to include having regard to the Local Authority Code of Publicity. -5(b)(iii) ***(There is logic to this otherwise breaches will not be subject to sanction under the ethical framework, but the Code of Publicity is in need of review)***
- Extends obligation to have regard to advice of Monitoring Officer and the Chief Financial Officer to include any relevant advice (not just statutory advice) -6(a) ***(MOs and CFOs will need to produce internal arrangements to clarify precisely what amounts to their advice!***  
Imposes a requirement to disclose a gift or hospitality (registered in last five years) as an interest -7(a)(vi) and 8(3) Gifts and hospitality are to be registered in the interests register which is a public document, rather than a separate notification to the MO. ***(In the circumstance of a gift or hospitality amounting to a personal interest, the threshold of £25 seems now to be low. A weakness of this arrangement is that there is no distinction between a bouquet of flowers or meal costing £30 and a holiday costing several hundred pounds, in respect of the disclosure or the cut-off period of 5 years. Again, no reference to bias)***
- Extends the well-being interest to a person with whom the member has 'a close personal association' -7(a)(c) ***(No definition. Is a friend a different relationship, now?)***

### **Omissions**

7. The draft Code does not include as a preface the General Principles, presumably because of legal difficulty, but it would be legitimate for local authorities to effect this locally, in order to identify the relationship between the General Principles and the Code.

8. The opportunity to bring the application of the code and the law of bias closer together has not been taken in the draft.

9. Whilst the inclusion of a definition of bias may be difficult to draft to reflect current law, it would be possible to refer to the law of bias in two paragraphs. (Unless bias amounts to disrepute (which is not clear cut), an act of bias by a member that results in a local authority decision being annulled, is excluded from the enforcement part of the ethical framework. This would seem to be odd, if not perverse.) An additional clause in Para 4(2) could include a finding of bias against a member as conduct amounting to disrepute.

10. It would be sensible to add an additional exception in para 9(2)(a) to public service interests that *would* be prejudicial, on the lines that participation in the matter would amount to bias or apparent bias.

### **Drafting aspects**

11. Whilst the reconstruction of the interests' part of the code helps to improve clarity, it would seem sensible to go one stage further and include all the bits dealing with 'public service interests' in a separate paragraph. -8(2), 8(7)(a)(i),(ii) and(iii), 9(2) and 9(4)(b). Having different definitions for public service interest in 7(a) and 9(4) could be confusing.

### **Conclusion**

12. The draft revised code contains a lot of detailed alterations to be absorbed by members, but most involve a measure of practicality and common sense. The significant changes are the omission of the obligation to report allegations of breach, and the relaxations involving disclosure of interests and prejudicial interests. The detail will need to be absorbed by democratic services officers responsible for handling meetings.

13. There is modest scope for improving the draft revised code, particularly in referring to bias law, in view of the increased risk of bias with the relaxation of prejudicial interests.



# LGIU Local Government Information Unit

Independent Intelligent Information

## Revised Model Code of Conduct: consultation (LGIU)

5/2/2007

Author: Hilary Kitchin

Reference No: PB 1349/07L

This covers: England

### Overview

The Government has published a consultation paper that seeks views on a new model code of conduct (the Code) for local authority members in England.

Key proposals include:

1. revising the regime for personal and prejudicial interests with the introduction of a new concept of public service interest
2. subjecting private conduct to regulation in relation to disrepute
3. addressing the issue of bullying
4. clarifying the circumstances under which members may disclose confidential information
5. removing the duty to report breaches of the Code.

Given the importance of these particular proposals, this briefing gives detailed information and commentary. The consultation paper can be found in the accompanying link.

Affiliates and individuals are encouraged to respond to the consultation. LGIU will be interested in seeing submissions and hearing comments, and can be contacted through the link in this briefing, as well as directly at [info@lgiu.org.uk](mailto:info@lgiu.org.uk).

The consultation paper was published by the Department of Communities and Local Government on 22 January 2007. Comments are sought by **9 March 2007** and should be sent by e-mail or post to the address given at the end of this briefing.

This briefing has been written for us by Ramani Chelliah, a local government lawyer, and former policy officer at LGIU.

### Briefing in full

#### A REVISED MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS

##### Introduction

The Local Government White Paper, *Strong and Prosperous Communities*, (October 2006) announced the government's intention to put in place a clearer, simpler and more proportionate Code of Conduct for members of local authorities, which would include

changes to the rules on personal and prejudicial interests. This follows a period of review and reflection on the current code, which was introduced in the Local Government Act 2000, and came into force in 2001.

The announcement followed the discussion paper *Standards of Conduct in English Local Government: The Future*, (December 2005), and took account of the government's response to Standards Board recommendations for amendments to the model Code of Conduct for members. It also took account of the recommendations of the Committee on Standards in Public Life in its 10th report (Graham Committee, January 2005).

In addition to revising the current code, the government is proposing to combine the current four individual codes into one consolidated code. The four model codes are the Local Authorities (Model Code of Conduct)(England) Order 2001, the Parish Councils (Model Code of Conduct) Order 2001, the National Park and Broads Authorities (Model Code of Conduct)(England) Order 2001 and the Police Authorities (Model Code of Conduct) Order 2001.

## The Proposals

The consultation paper contains many detailed proposals to amend and update the the Code, not all of which can be covered in this Briefing. The main proposals are as follows:

### 1. Personal and prejudicial interests

Several changes are proposed that will impact on the current regime for personal and prejudicial interests. These include the following:

a) Personal interests - paragraph 8 of the current Code provides that a member must regard him (or herself) as having a personal interest in a matter if a decision on it affects him to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend. The proposal is to alter the definition by:

- extending the definition by including a wider term covering any person with whom the member has a "close personal association" (paragraph 7( c)(i) and elsewhere)
- reducing the number of registrable interests by replacing the reference to the inhabitants of an authority's area with "the majority of the inhabitants of the ward affected by the matter" (paragraph 7(c)).

b) Public service interests – the proposal is to create a new category of 'public service interest', subject to a prejudicial interest test, which will arise where a member is also a member of another public body or a charity or a lobbying body.

Where a public interest is not prejudicial, there will be no need to declare it at the meeting, provided that it is properly recorded in the member's register of interests. Where a public service interest should be treated as prejudicial, it will need to be declared, and the member concerned will not be able to vote on the issue under discussion. However, members with prejudicial public service interests will be able to remain in the room and participate in debate, but be required to withdraw before any vote is actually taken.

A public service interest would only be considered prejudicial where:

- the matter relates to the financial affairs of the body concerned, or
- where the matter relates to the determining of any approval, consent, licence or permission (eg in respect of planning and licensing) in relation to the body.  
(paragraph 9(2)(a))

**LGIU Comment:** The Standards Board consultation showed that councillors have too often felt excluded from discussing issues where they have a legitimate interest and where the public would expect them to be representing the views of their communities. Members may be voted into office because of their personal and professional experience and their commitment to campaigning on particular issues. Yet, by preventing members with interests that are currently treated as prejudicial from addressing a meeting, the Code unnecessarily limits the quality of information and advice available.

The government has recognised this problem and adopted the recommendation of the Standards Board to distinguish between the different types of personal interest that can arise. These changes will remove some of the current constraints on councillors acting as local advocates and is a positive development for local democracy.

## 2. Bullying

The current Code states that a member must treat others with respect (paragraph 2(b)) and that a member must not bring his or her office or authority into disrepute (paragraph 4).

The proposal is to add a specific new general obligation (under paragraph 2) stating that a member must not bully any person. The definition of bullying will be left to guidance to be issued by the Standards Board for England.

**LGIU Comment:** this takes on board the Standards Board recommendation to provide a strong signal of disapproval of such behaviour and is a welcome recognition that such behaviour has no place in modern local government.

## 3. Disrepute and behaviour outside official duties

The current Code (paragraph 4) provides that a member must not in an official or any other circumstance conduct himself in a manner which could reasonably be regarded as bringing his office or the authority into disrepute.

A High Court decision, in the appeal of the Mayor of London, October 2006, cast some doubt on the ability of the Code to proscribe behaviour of members in their private capacity.

Current thinking in Government suggests that the Code is likely to provide only for private behaviour for which the member has been convicted by a court, and not behaviour falling short of a criminal offence. As a result, it is anticipated that amendments to sections 49 - 52, Local Government Act 2000 will be brought forward, to ensure that behaviour in a private capacity is included within the remit of the Code.

Views are being sought on this issue during the consultation period.

**LGIU Comment:** It is important to balance the need for members to continue to set an example to their communities, and the need to prevent actions outside official duties being caught, when they might meet with disapproval, but not be sufficiently serious to justify being treated as a breach of the Code.

It is proposed that the Code should only cover behaviour in the private sphere which has resulted in a criminal conviction: however, it should be noted that the Graham Committee and Standards Board had reached different conclusions.

The Committee on Standards in Public Life (the Graham Committee) recommended that a code should be restricted to members' actions in an official capacity, in public life.

The Standards Board has recommended that the current rule should be amended to provide that certain behaviour outside official duties should continue to be regulated, but that this should be restricted to matters that would be regarded as unlawful. Their proposal is that conduct which amounts to a criminal offence, (but has not necessarily been the subject of a prosecution), should be regarded as bringing the member's office or authority into disrepute.

#### **4. Disclosure of confidential information**

The current Code at paragraph 3(a) prohibits members from disclosing information given to them in confidence or which the member believes is of a confidential nature.

The proposal for reform is to allow members to disclose confidential information where such disclosure is reasonable and in the public interest and is made in good faith and does not breach any reasonable requirements of the authority (paragraph 3(a)(iii)).

This follows an Adjudication Panel decision in 2005 which found that paragraph 3(a) of the Code fails to properly take into account Article 10(1) of the European Convention on Human Rights on freedom of expression. The Panel found that in order to be compatible with Article 10(1), the Code should be read so as to allow for the disclosure of information of a confidential nature where it is in the public interest.

The Standards Board is to issue guidance on how they would expect members to interpret the new provision.

**LGIU Comment:** It is important that the public interest test does not allow members to use the defence of public interest when merely seeking to make political capital through disclosure of properly confidential information. The proposals aim to strike the correct balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest.

Much will depend on how these proposals are to be interpreted. Difficult issues remain, of clarifying the distinction between 'information given in confidence' and 'information of a confidential nature', the requirements of the Freedom of Information Act 2000 and the perception that more information considered at council meetings is categorised as 'confidential' than meets the strict legal criteria. These issues will be dealt with in guidance.

#### **5. Replacing the duty to report breaches of the Code, and provisions on the intimidation of witnesses**

The current Code (paragraph 7) provides that a member must, if he or she becomes aware of another member's breach of the Code, report that breach to the Standards Board.

The reform proposed here is for the deletion the duty to report, and the introduction of a prohibition on the intimidation of complainants and witnesses (paragraph 2(2)(c)).



**LGIU Comment:** the removal of this unpopular provision, that in practice has been used as a pretext for making politically motivated or trivial allegations to cause mischief, will be welcomed. With the shift towards the local investigation of cases, which will follow the Local Government and Public Involvement in Health Bill, it is especially important that officers who are required to handle such cases are able to act free from inappropriate pressure from members.

## **6. Misuse of resources and local authority publicity**

The proposal is to make it clear that, in addition to providing (paragraph 5) that members should not use resources improperly for political purposes, they should also have regard to the Government's Code of Recommended Practice on Local Authority Publicity.

Views are sought on the usefulness of the Publicity Code and possible alternatives.

**LGIU Comment:** Many authorities have effective local protocols governing the use of council resources. It was the recommendation of the Standards Board that all authorities should be encouraged to adopt effective protocols, with enforcement broadly left to the local level.

It has been suggested by some, including the LGIU, that the Code of Practice on Local Authority Publicity is unnecessarily restrictive, in that it acts as a constraint on proactive community leadership.

## **7. Gifts and hospitality**

The current Code requires gifts or hospitality over the value of £25 to be notified to the monitoring officer (paragraph 17). There is no provision for such information to be made public in the register of members' interests.

The proposal is to include such gifts and hospitality as a personal interest that is made public (paragraph 7(a)(vi)).

## **Responding to the consultation**

It is clear that there are significant issues to address during this period of further consultation. Once again, affiliates and individuals are encouraged to respond to the consultation. LGIU will be interested in seeing submissions and hearing comments, and can be contacted through the link in this briefing, as well as directly at [info@lgiu.org.uk](mailto:info@lgiu.org.uk).

Comments are sought by **9 March 2007** and should be sent by e-mail or post to William Tandoh, Local Democracy Directorate, Communities and Local Government, 5/G10, Eland House, Bressenden Place, London, SW1E 5DU, [william.tandoh@communities.gsi.gov.uk](mailto:william.tandoh@communities.gsi.gov.uk)

## **LGIU's General Comments**

The task of updating and amending the Code requires a recasting of the delicate balance to be struck on sensitive issues. The freedom of members to act as local advocates must be balanced against the right of the public to have public decisions made without the improper influence of personal or vested interests; the right to freedom of expression of members must be balanced against the need to protect confidential information.

The consultation paper has been shaped largely by the recommendations of the Standards Board, which were based on the findings of an extensive consultation carried out in 2005. As such, the proposals represent a well considered and evidence based approach to updating and amending the Code in the light of experience since 2001.

It had been expected that the new Code would open with a statement of principle, incorporating the ten general principles set out in the Relevant Authorities (General Principles) Order 2001: selflessness, honesty and integrity, objectivity, accountability, openness, personal judgement, respect for others, duty to uphold the law. The Standards Board found much support for the idea of including these principles as a standard-setting measure within the Code. This was also a recommendation of the Graham Committee. It is a surprising omission. However, the government is not proposing to adopt this approach and no explanation has been provided for not doing so.

## Additional Information

### Covers

[Send Feedback for this briefing](#)

### Related links

- [consultation document](#)

### Related briefings

- [Members and Officers Conduct](#) 

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# Annex B

## Your views

We would welcome your views on the issues covered by this consultation paper and any other comments and suggestions you may have.

## Questions

The specific questions which feature throughout the text of this paper are reproduced for ease of reference:

Q1. Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?

Q2. Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in a member's private capacity to those activities which have already been found to be unlawful by the courts, appropriate?

Q3. Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, eg via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?

Q4. Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?

Q5. Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?

Q6. Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?

Q7. Is the proposed text relaxing the rules to allow increased representation at meetings, including where members attend to make representations, answer questions, or give evidence, appropriate?

Q8. Is there a better, more user-friendly way of ensuring the text is gender-neutral, for example, would consultees consider that amending the wording to say 'you' instead of 'he or she' or 'him or her' would result in a clearer and more accessible code for members?

Comments should be sent by e-mail or post by 9 March 2007 to:

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Local Democracy Directorate  
Department for Communities and Local Government  
5/G10  
Eland House  
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## Planning Protocol – Suggested Changes to Sections 5, 6 and 22

### 5. "Dual Hatted" Councillors

- 5.1 The Code of Conduct does not automatically prevent a Councillor from considering the same matter at more than one tier of local government, including speaking and voting in both tiers. The reference in paragraph 10(2)(a) of the Code to members of "another relevant authority" reinforces this point.
- 5.2 If an issue is for discussion at both the parish and district level, and a Councillor sits on both authorities, you should:
- (a) at the parish level make it clear that you will reconsider the matter at the district level, taking into account all relevant evidence and representations at the district tier; and
  - (b) at the district level, declare personal (but not prejudicial) interests arising from your membership of the Parish Council which has already expressed a view on the matter and make it clear that the Parish Council's view does not bind you and that you are considering the matter afresh.
- 5.3 These guidelines apply even if a proposal has a direct impact on a particular location. For example, there is no objection, in principle, to a Councillor speaking and voting on issues in the District Council's development plan that particularly affect your parish. However Councillors must still consider if they have a prejudicial interest arising from the impact of the proposals on their personal well-being or financial position. In such circumstances, it would not be appropriate for you to rely on paragraph 10(2).
- 5.4 In some situations, it is unrealistic to expect a member of the public to believe you would disregard the interests of another public body on which you serve. For example, you should not sit on decision-making bodies dealing with planning when they decide applications from an authority on which you also serve. Even though these situations fall within the scope of sub-paragraphs 10(2)(a) and (b), a reasonable member of the public would think that your judgment is likely to be prejudiced. In addition, a legal challenge could be made against the authority's decision-making process if you participate in these circumstances.

5.5 Where the procedures of the District Council dictate that a planning application is referred on for further consideration at the District Development Control Committee or the District Council itself, members of Council should not regard themselves as a "dual hatted" Councillor for the purposes of this section of the Protocol.

### 6. Fettering a Councillor's Discretion

- 6.1 District Councillors (including those who are also members of Town or Parish Councils) should take care to ensure that they are seen to maintain an open mind until they have heard all the evidence and arguments which will be presented at the appropriate Area Plans Sub-Committee, the District Development Control Committee or, if necessary, the Full Council. This is particularly the case where Councillors serve on Parish councils and have spoken and voted on a planning matter and have not reserved their final position. (See section 5 above).
- 6.2 However, if members in advance of the decision-making meeting commit themselves to a firm view on a planning matter and state this publicly, whether in meetings of

another body, in the media, in election material, or otherwise, they would be unable to demonstrate that all the relevant facts and arguments had been taken into account. They would have "fettered" their discretion. Were they to participate in a decision in those circumstances, they would have a prejudicial interest and might place the decision made by the Council at risk of judicial review. If, therefore, Councillors comment publicly they must be careful to reserve their final position. An open mind on the issues must be genuine. A mere statement to that effect in the face of actions and comments to the contrary will not suffice.

- 6.3 Any Councillor who has fettered his or her discretion, whether before or after election to the Council, must declare a prejudicial interest under the Code of Conduct and leave the meeting. Even if the member does not have any other interest, they must leave the meeting.
- 6.4 Any member who is uncertain as to whether his or her actions would be regarded as having fettered his or her discretion should ask the Standards Committee or the Monitoring Officer for advice.
- 6.5 For the purposes of this section of the Protocol, a Chairman or member of an Area Plans Sub Committee should not regard themselves as under a duty to support the views of that Sub Committee if the planning application or other matter is referred on to the District Development Control Committee or the District Council.

## **22. Development Proposals Submitted by Councillors and Officers or Where They Are Objectors**

- 22.1 Applications to their own Authority by serving and former Councillors and officers and their close friends, partners, employers or business associates (including those of relatives) and relatives themselves can easily give rise to suspicions of impropriety.
- 22.2 It is perfectly legitimate for such proposals to be submitted. However, it is vital to ensure that they are handled in a way which gives no grounds for accusations of favouritism. Serving Councillors, Chief Officers and staff of Planning Services together with other Council staff who act as agents for applicants should play no part in the decision-making process in respect of those proposals. The Council's Monitoring Officer and the Head of Planning and Economic Development should be told by the Councillor or member of staff that an application has been made as soon as it is submitted. In the event that the Monitoring Officer or the Head of Planning and Economic Development is the applicant they should notify the Deputy Monitoring Officer and an Assistant Head of Service respectively. Both postholders shall also advise the appropriate Joint Chief Executive. Councillors and officers therefore should be scrupulous in completing the appropriate sections of the application form prescribed by the Government. Any such applications, whether by Members or officers, cannot be dealt with by the Head of Planning Services under delegated powers. All such cases will stand referred to the Area Plans Sub-Committee concerned.
- 22.3 A Councillor submitting an application will invariably have a personal and prejudicial interest in the application. He or she must declare this interest at the meeting where the application is under discussion and withdraw whilst it is considered.
- 22.4 A Councillor who is an applicant or who otherwise has a prejudicial interest under the Code of Conduct in an application should not 'improperly seek to influence a decision about the matter' (Paragraph 12(1)(c) of the Code of Conduct). 'Improperly' should not imply that a Councillor should have any less rights than a member of the public in seeking to explain and justify their proposal to an officer in advance of consideration by a Committee.
- 22.5 An officer submitting an application has a clear interest in that application. He or she must also declare that interest and leave if present at the meeting at which the application is discussed. They must then leave the meeting. Applications submitted by Councillors or officers will always be determined by an Area Plans Sub-Committee or the District Development Control Committee and not by the Head of Planning Services under delegated powers.
- 22.6 In all such cases, the aim must be to ensure that applications are dealt with in the same way as those by any other person. This will avoid any suggestion of preferential treatment.
- 22.7 Members of the Council and officers will have a clear interest in a planning matter if they are an objector in respect of a proposal being made by another party. In those circumstances, the same procedures shall be followed as outlined above.

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# Agenda Item 7

(Monitoring Officer) To note the current position on allegations made to the Standards Board for England regarding District and Parish/Town Councillors.

<b>Standards Board Reference</b>	<b>Current Position</b>
SBE 15247.06 Formerly SBE 14652.06	Investigated at the local level – Adjudication Sub-Committee found breach of Code of Conduct but decided no action needs to be taken.
SBE 15017.06	Investigated at the local level – Standards Committee found no breach of the Code of Conduct.
SBE 17249.07 and SBE 17009.06	Standards Board decided that the allegations should not be investigated. Complainant sought a review of the decisions. Standards Board undertaking a review of SBE 17249.07 which will encompass a review of the correspondence in SBE 17009.06 – there is no right of review of the latter decision because referral was not possible due to the limited information provided by the complainant. Correspondence from the Standards Board regarding the original decisions only recently received as previously wrongly sent to Milton Keynes Council.

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