

# LGIU Local Government Information Unit

Independent Intelligent Information

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

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## 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

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### Related briefings

- [Members and Officers Conduct](#) 

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