

Meeting of: STANDARDS COMMITTEE

Date: 16TH JUNE 2005

Report of: CORPORATE DIRECTOR (CENTRAL SERVICES)

Reference: CDCS/HLS

Title: CONSULTATION PAPER ON THE REVIEW OF THE CODE OF CONDUCT FOR MEMBERS

PUBLIC/EXEMPT ITEM

This item is for consideration in the public part of the meeting.

PURPOSE OF THE REPORT

To enable the Committee to consider a Standards Board Consultation Paper on a review of the Code of Conduct, and determine whether Members wish to respond.

RECOMMENDATIONS

The Committee is asked to note the report and to consider whether it wishes to respond to the Consultation Paper.

REPORT

Introduction

The Code of Conduct was introduced in November 2001 and came into force across all local authorities in May 2002. The Standards Board for England is now reviewing the Code of Conduct, and has issued a Consultation Paper. The full Consultation Paper is available on the Standard Board's website – www.standardsboard.co.uk – and should be read in conjunction with the Code of Conduct.

The deadline for responses is the 17th June 2005.

The purpose of the consultation is to review the effectiveness of the Code of Conduct, and explore ways in which it could be simplified, clarified and improved. The Standards Board wishes to use the consultation exercise as an opportunity to ask whether the Code of Conduct captures all the conduct it should, and to focus on areas of the Code of Conduct which are contentious or may need clarification.

The Consultation Paper asks twenty nine questions, under ten separate headings. These headings are followed in this report, which attempts to summarise the salient points of the Consultation Paper.

The General Principles

The Code of Conduct is required by Section 50(4)(a) of the Local Government Act 2000 to be consistent with the general principles of conduct in public life, which are set out in a

Statutory Instrument. These are selflessness; honesty and integrity; objectivity; accountability; openness; personal judgment; respect for others; duty to uphold the law; stewardship; and leadership.

The Standards Board considers that these principles should be included as the preamble to a revised Code of Conduct. The Board does not believe that failure to adhere to the general principles should be considered as specific grounds for investigation, but believes inclusion would serve to clarify the Code of Conduct

The questions asked under this heading are:

- 1. Should the ten general principles be incorporated as a preamble to the Code of Conduct?**
- 2. Are there any other principles which should be included in the Code of Conduct?**

Members may wish to note that this Council has already adopted its own preamble to the Code of Conduct, which sets out the ten principles.

Disrespect and Freedom of Speech

Under the Code of Conduct, a Member must treat others with respect. The Standards Board's experience is that what is perceived as disrespect often varies widely between individuals and between ethnic and local and regional cultures. However, making the definition of disrespect more specific may mean that it would paradoxically become more inflexible and could not seek to reflect a variety of views on what is respectful. The Standards Board recognises that members must have a right to comment on matters of public concern, provided their comments do not breach discrimination legislation or cross the line into overly personal attacks.

The Standards Board believes that a new provision specifically addressing bullying would be of significant symbolic and practical value to the local government community, as it would show that bullying is an issue which should be specifically dealt with.

The questions asked under this heading are:

- 3. Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?**
- 4. Should the Code of Conduct include a specific provision on bullying? If so, is the ACAS definition of bullying appropriate for this?**

That definition is that "bullying may be characterised as a pattern of offensive, 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."

Confidential Information

Under the Code of Conduct, a Member must not disclose information given to him in confidence, or which he believes is of a confidential nature.

The Standards Board is aware that there is an argument that releasing confidential information in the public interest should be recognised as a defence to a breach of the Code.

Under the Freedom of Information Act 2000, in considering whether to disclose information, a local authority must seek to balance the need to maintain confidentiality with the public interest in disclosing the information.

- 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?**
- 6. Do you think 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?**

Disrepute and Private Conduct

The Code provides that a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute. This raises questions about whether and to what degree the actions of members in their private lives should be scrutinised.

The Standards Board believes that the provision should continue to link a member’s conduct in their private life to its relevance to the performance of their public office.

In deciding whether to refer complaints for investigation, the Standards Board has generally looked at three areas of private conduct:

- cases of unlawful behaviour that would be sanctioned by the courts, such as criminal convictions and cautions
- whether the member’s private behaviour brings into question the member’s fitness to carry out their official duties
- whether the member’s private behaviour has undermined the public’s confidence in the member’s ability to carry out their official duties

- 7. Should the provision related to disrepute be limited to activities undertaken in a member’s official capacity or should it continue to apply to certain activities in a member’s private life?**
- 8. If the latter, 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?**

Misuse of Resources

The Code provides that when using the resources of the authority, a member must act in accordance with the authority’s requirements and ensure that such resources are not used for political purposes unless that use could reasonably be regarded as likely to facilitate the discharge of the authority’s functions or the member’s office.

The phrase “political purposes” was intended to complement Section 2 of the Local Government Act 1986 which prohibits the publication of material designed to affect public support for a political party.

The Standards Board believes that there should be allowed a low threshold for some resource use, while leaving further regulation of resources to individual authorities.

The Standards Board believes that with regard to use of resources for “political purposes” this provision of the Code should address three issues as breaches:

- a breach of the 1986 code of publicity
- a breach of any local protocol
- misuse of resources, in particular officer time, for inappropriate political purposes

9. Do you agree that the Code of Conduct should address the three areas set out above?

10. If so, how could we define “inappropriate political purposes”?

11. Do you agree that the Code should not distinguish between physical and electronic resources?

Duty to report breaches

The Code of Conduct requires members who have a reasonable belief that a fellow member has breached the Code of Conduct to make a complaint to the Standards Board.

The Standard Board considers that this provision should be retained because it gives effect to the principles of openness and accountability. Deleting the provision would not stop frivolous or malicious complaints, as members would still be able to report alleged breaches.

Members might be deterred from making false and malicious allegations if it was a breach of the Code to do so. However, such a provision could also act as a deterrent for members making complaints where they have legitimate concerns, in case subsequent investigation finds the complaint to be unfounded.

12. Should paragraph 7 be retained in full, removed altogether or somehow narrowed?

13. If you believe the provision should be narrowed, how would you define it? For example, should it only apply to misconduct in a member’s public capacity, or only to significant breaches of the Code?

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

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

Personal Interests

The definition of a personal interest in the Code includes the terms “friend” and “wellbeing” neither of which are defined, although the Standards Board has issued guidance on their interpretation.

Paragraph 10(2) of the Code sets out certain circumstances where members who have a personal and prejudicial interest may, but not necessarily should, regard themselves as not having a prejudicial interest, and may therefore participate in decision making. In particular this applies where the member is a member also of other public bodies. This paragraph has not been easy to interpret, and the Standards Board believes that it has been misconstrued.

The Standards Board proposes a new “public service interest” for members who serve on other public bodies. This would be subject to the prejudicial interest test, but where a public service interest was not prejudicial, it would not need to be declared at a meeting. Where it was prejudicial, the member could participate in debate, and would be required to withdraw only when the vote was taken.

The Standards Board also proposes similar rules for interests arising from membership of charities and lobby groups.

- 16. Do you think the term “friend” requires further definition in the Code of Conduct?**
- 17. Should the personal interest test be narrowed so that members do not have to declare interests shared by a substantial number of other inhabitants in an authority’s area?**
- 18. Should a new category of “public service interests” be created which is subject to different rules of conduct?**
- 19. If so, do you think public service interests which are not prejudicial and which appear in the public register of interests should have to be declared at meetings?**
- 20. Do you think paragraph 10(2)(a-c) should be removed from the Code?**
- 21. Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups?**

Prejudicial Interests

In the case of *R. (on the application of Richardson) v North Yorkshire CC*, it was held that a member who had a prejudicial interest was not entitled to attend a meeting even in his personal capacity.

There is an argument that members should have the same right to make representations as members of the public. However, the Code was drafted to give effect to the principle that members undoubtedly have, or are perceived to have, a greater influence than ordinary members of the public.

- 22. Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?**
- 23. Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?**

Registration of Interests

The Standards Board is aware that many members feel that there is a lack of clarity in the Code around the nature and scope of the organisational memberships that must be registered.

- 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?**
- 25. Should members be required to register membership of private clubs and organisations? If so, should it be limited to organisations within or near an authority’s area?**

Gifts and Hospitality

26. Should the Code of Conduct require that the register of gifts and hospitality be made publicly available?
27. Should members also need to declare offers of gifts and hospitality that are declined?
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?
29. Is £25 an appropriate threshold for the declaration of gifts and hospitality?

Conclusion

If Members formulate their response at the meeting, this can be passed on to the Standards Board to meet the deadline.

FINANCIAL IMPLICATIONS/SECTION 151 OFFICER'S COMMENTS

There are no financial implications, and the Section 151 Officer has no further comments.

LEGAL IMPLICATIONS/MONITORING OFFICER'S COMMENTS

The report has been prepared in conjunction with the Head of Legal Services, and there are no further comments.

BACKGROUND PAPERS

Code of Conduct.

Standards Board Consultation Paper.