

STANDARDS COMMITTEE

CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS 23rd February 2007

Report of Head of Legal and Human Resources/Monitoring Officer

PURPOSE OF REPORT

To enable the Committee to consider its response to the government's Consultation Paper on the Code of Conduct.

This report is public

RECOMMENDATIONS

- (1) **The Committee is requested to indicate whether it wishes to respond to the Consultation Paper on amendments to the Model Code of Conduct for Local Authority Members, and, if so, to indicate its response and authorise the Head of Legal and Human Resources to submit the response on its behalf.**

1.0 Introduction

- 1.1 Members may recall that at its meeting in June 2005, the Committee considered a Standards Board Consultation on a review of the Code of Conduct. Following that consultation, the Standards Board made recommendations to the government, and the government's response was set out in a Discussion Paper "Conduct in English Local Government: The Future" issued in December 2005. Since then, a revised Code of Conduct has been awaited, and on the 22nd January 2007, the government issued a draft revised Code of Conduct with a further Consultation Paper. The government is seeking responses by the 9th March 2007.

2.0 Proposal Details

- 2.1 The Consultation Paper, together with the draft revised Code of Conduct is appended to this report (Appendix 1). Members will note that it is now intended for there to be one Code of Conduct for all local authorities, rather than different Models for different kinds of authority, as at present. Once the new Code of Conduct is finalised, it would be the intention of the Monitoring Officer to provide the parish councils with a template to ensure that those provisions that are not relevant to parishes are deleted.

2.2 One of the reasons for the delay in publishing the revised Code of Conduct was the decision of the High Court in October 2006 in a case involving the Mayor of London, which cast doubt on the lawfulness of the Code applying to the conduct of Members in their private capacity. The government intends to use the Local Government and Public Involvement in Health Bill, which is likely to be enacted in October 2007, to extend the application of the Code to conduct in Members' private lives. The revised Code appears to have been drafted to avoid the need for further revision when that amendment is enacted.

2.3 The draft revised Code provides a number of relaxations from the current Code. For example:

- it removes the obligation to report allegations of failure to comply with the Code
- it allows for the disclosure of confidential information where it is in the public interest to do so
- it 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
- it creates a new category of public service interest as to membership of another relevant authority, public authority or body to which the Member is appointed by the Council
- it 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 and before the decision making process

2.4 The draft revised Code imposes additional obligations on Members, such as:

- not to bully any person
- not to intimidate a person involved in proceedings under the Code
- to have regard to the Local Authority Code of Publicity

2.5 The Consultation Paper sets out eight specific questions on which views are sought, as follows:

1. *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?*
2. *Subject to powers being available 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 members' private capacity to those activities which have already been found to be unlawful by the courts, appropriate?*
3. *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? For Members'*

information a copy of the Code of Practice is appended to this report (Appendix 2).

4. *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?*
5. *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?*
6. *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?*
7. *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?*
8. *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?*

2.6 The Consultation Paper indicates that, apart from these specific questions, the government welcomes any comments and suggestions on the issues covered.

2.7 The Monitoring Officer would comment on the draft revised Code as follows:

Paragraph 3(iii) – It is not clear whether the word “and” or the word “or “ should appear between subparagraphs (aa) and (bb). (Question 1 of the Consultation Paper refers).

Paragraph 4(2) – The wording does not appear to limit the conduct to that which is a criminal offence, although the Consultation Paper suggests that this is what is intended. (Question 2 of the Consultation Paper refers).

Paragraph 8(2) – If a Member with a public service interest does not speak, there is no requirement to declare the interest. A member of the public might find it confusing for one Member to declare an interest and another not (because the Member did not speak), when both take part in the decision by voting.

Paragraph 9(2) – The wording “A member does not have a prejudicial interest....” is to be welcomed, as the equivalent wording in paragraph 10(2) of the current Code, “A member may regard himself as not having a prejudicial interest....” has been the source of much doubt and confusion.

Interests – It would perhaps have been clearer to have all the references to “public service interests” in a separate paragraph. Having different definitions for public service interest in paragraphs 8(7)(a) and 9(4) is confusing.

Definitions – “close personal association” and “family” are not defined, and this may lead to difficulties in interpretation.

Bias – It might be helpful if there was a reference in the revised Code under the heading of “prejudicial interests”, to the fact that a Member should not participate in decision-making, notwithstanding that a prejudicial interest does not arise, if such participation is likely to lead to a perception of bias. The Code is sometimes read in isolation, and it is important that Members are aware that the Code does not exclude the application of common law rules. A specific reference to bias might emphasise this.

2.7 As indicated above, responses to the consultation are requested by the 9th March 2006. It is not clear when the final version of the Code of Conduct will be published, but it seems likely that this will not be in time for it to be adopted by the Council before the May elections. This is unfortunate, as it means that after the elections, members will be required to sign up to the current Code, even though it will shortly be superseded, and training will need to be provided on both the current and the revised versions. This will apply to parish councils, as well as the City Council. Members who wish to comment on this in their response.

3.0 Details of Consultation

3.1 This is the Committee’s opportunity to respond to the government consultation.

4.0 Options and Options Analysis (including risk assessment)

4.1 The Committee should decide whether or not it wishes to respond to the consultation, and, if so what its response should be.

5.0 Conclusion

5.1 The Committee is asked to consider the Consultation Paper and the draft revised Code of Conduct.

FINANCIAL IMPLICATIONS

There are no financial implications arising from this report.

SECTION 151 OFFICER’S COMMENTS

The Section 151 Officer has been consulted and has no further comments to add.

LEGAL IMPLICATIONS

Legal Services have been consulted and have no further comments.

MONITORING OFFICER’S COMMENTS

The Deputy Monitoring Officer has been consulted and has no further comments to add.

BACKGROUND PAPERS

None.

Contact Officer: Mrs. S. Taylor
Telephone: 01524 582025
E-mail: STaylor@lancaster.gov.uk