

**STANDARDS COMMITTEE  
9 DECEMBER 2008**

**CONSULTATION PAPER: 'COMMUNITIES IN CONTROL: REAL PEOPLE, REAL  
POWER. CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND  
EMPLOYEES'**

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**Purpose of the Report**

- 1 To seek Members' views on a new Consultation Paper that has been issued by the Government.

**Background**

- 2 The Government has issued a Consultation Paper entitled 'Communities in Control: Real people, real power. Codes of conduct for local authority members and employees'.
- 3 The Consultation Paper covers three main areas:
  - proposed amendments to the Members' Code of Conduct
  - proposed amendments to the Ten General Principles of Standards in Public Life
  - proposals for a Model Code of Conduct for Local Government Employees
- 4 The consultation period ends on 24 December 2008.
- 5 A summary of the Consultation Paper, along with the twenty two specific questions to which the Consultation Paper seeks a response, are contained in the remainder of this report. A copy of the current Members' Code of Conduct is attached at Appendix 1.

## **The Members' Code of Conduct**

- 6 Government issues a Model Code of Conduct by way of a Statutory Instrument (regulations) approved by Parliament.
- 7 The Consultation Paper proposes that the Code of Conduct is restructured, and that it will in future be divided into two sections. The first will deal with Members' conduct when acting in an official capacity and reflecting what is in the current code: the second will deal with Members' conduct in their non-official capacity
- 8 The need to clarify what conduct in a Member's non-official capacity is covered by the Code has arisen as a consequence of a Court judgment in 2006. This cast doubt on the ability of the Code to cover Members' conduct not linked to the performance of their public duties. The Consultation Paper makes it clear that the Government considers that certain behaviour, even when there is no direct link to the Member's official role, can have an adverse effect on the level of public trust in local authority Members and local government as a whole.
- 9 The Consultation Paper proposes that the new Members' Code should, in the section covering the conduct of members in their non-official capacity, contain the following provision relating to conduct that constitutes a criminal offence:  
*"Members must not bring their office or authority into disrepute by conduct which is a criminal offence".*

### **Consultation Question 1**

Do you agree that the Members' Code of Conduct should apply to a Member's conduct when acting in their non-official capacity?

- 10 The Consultation Paper proposes that, for the purpose of the Members' Code of Conduct, 'criminal offence' should be defined as any criminal offence for which the member has been convicted in a criminal Court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.
- 11 The Government's intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the Code of Conduct. This approach will ensure that the most minor criminal offences, for example minor motoring offences and dropping litter, as well as cautions, will not constitute a breach of the Code. Serious criminal offences such as assault, harassment, fraud and offences relating to child pornography will be included in the remit of the Code.

### **Consultation Question 2**

Do you agree with this definition of 'criminal offence' for the purpose of the Members' Code of Conduct? If not, what other definition would you support, for instance should it include police cautions? Please give details.

- 12 The legislation gives the Secretary of State power to define, for the purposes of the Members' Code of Conduct, what constitutes 'official capacity'. The current Code defines the term 'official capacity' as conducting the business of the Authority, including the business of the office to which the Member or co-opted Member was elected or appointed; or acting, claiming to act or giving the impression that the Member is acting as a representative of their authority. The Consultation Paper proposes that in future the definition should be changes from "conducting the business of the Authority" to "being engaged in the business of the Authority".

### **Consultation Question 3**

Do you agree with this definition of 'official capacity' for the purpose of the Members' Code of Conduct? If not, what other definition would you support? Please give details.

- 13 The Consultation Paper also proposes that the Members' Code of Conduct should include conduct in foreign countries, where that conduct constitutes a criminal offence in that country, and where the conduct would also constitute a criminal offence if it was committed in the UK. However, the code would only apply if the individual was convicted in the country in which the offence was committed.

### **Consultation Question 4**

Do you agree that the Members' Code of Conduct should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?

- 14 The effect of the Government's proposals would be that the only conduct in a Member's non-official capacity that will be covered by the Code of Conduct is that which constitutes a criminal offence, as defined above. The Code may only then be applied when the Member's conduct results in a criminal conviction of the Member in the Courts. This would mean, for example, that a Member who was convicted of a criminal offence of assault or harassment could be held to have breached the Code, even if the conduct, which lead to the conviction took place entirely outside the Member's official capacity.
- 15 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the Courts, the Consultation Paper proposes that the Standards Committee (or the Standards Board, as the case may be) would cease any investigation process until the criminal process had been completed. Any subsequent action under the Code of Conduct would only follow after the conclusion of the criminal procedure. The Member would not be suspended during the period of the criminal process.
- 16 For the purpose of the Code of Conduct, the criminal process will be considered to have been completed at the conclusion of any appeals process

### **Consultation Question 5**

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

### Parish councils

- 17 The Government intends to make it mandatory in relation to Parish Councils that a Member with a prejudicial interest may make representations at a meeting only if members of the public are able to attend that meeting for the same purpose. Currently, if a Parish Council wishes this provision to apply, it must make a conscious decision to adopt it into its code. This amendment would save unnecessary administration and ensure consistency across parish councils.

### Membership of other bodies

- 18 The Government intends to amend the current Members' Code of Conduct to clarify that 'Membership of other bodies' refers specifically to bodies which exercise functions of a public nature.

### Personal interests

- 19 The Government intends to clarify that a Member is required to register a gift or hospitality with an estimated value of at least £25 in his or her register of Members' interests.

### Prejudicial interest

- 20 The Government intends to remove the double negative in the current Code of Conduct to make it clear that a prejudicial interest exists where the business of the Authority affects a Member's financial position or the financial position of a person listed in paragraph 8 of the Code (eg a family member or close friend), or it relates to the determining of any approval, consent, licence, permission or registration in relation to a Member or those persons listed in paragraph 8 of the code.
- 21 The Consultation Paper proposes that the meaning of 'determining' (any approval, consent, licence, etc) in should be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.
- 22 The Consultation Paper also proposes that the Code of Conduct should be amended to clarify that a Member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority Standards Committee hearing regarding an allegation that a Member of the authority had failed to comply with the Code.

### Registration of members' interests

- 23 The Consultation Paper proposes that the new Members' Code of Conduct will automatically take into account any existing registration of Members' interests. This will ensure that Members who have already registered their interests in line with the 2007 model Code do not have to repeat the process when the revised Code is introduced

### **Consultation Question 6**

Do you think that the amendments to the Members' Code of Conduct suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

### **Consultation Question 7**

Are there any aspects of conduct currently included in the Members' Code of Conduct that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

### **Consultation Question 8**

Are there any aspects of conduct in a Member's official capacity not specified in the Members' Code of Conduct that should be included? Please give details.

- 24 The Consultation Paper proposes that Members will have two months from the date that their Authority adopts the new Code to give a written undertaking that they will observe their Authority's Code. Failure to do so will mean that they cease to be Members of the Authority.

### **Consultation Question 9**

Does the proposed timescale of two months, during which a Member must give an undertaking to observe the Members' Code of Conduct, starting from the date the authority adopts the Code, provide Members with sufficient time to undertake to observe the Code?

## **The Ten General Principles of Standards in Public Life**

- 25 The ten general principles of standards in public life are also set down in regulations approved by Parliament. In brief, these are:

- Selflessness
- Honesty and Integrity
- Objectivity
- Accountability
- Openness
- Personal Judgement
- Respect for Others
- Duty to uphold the law
- Stewardship
- Leadership

- 26 The Government is proposing that these are amended to make clear which principles govern the conduct of Members when acting in an official capacity and which principles will apply to the conduct of Members when acting in a non-official capacity, and where the Member's conduct would constitute a criminal offence. The Consultation Paper proposes that the following new principle is added to those listed above:

*Duty to abide by the law*

Members should not engage in conduct which constitutes a criminal offence.

**Consultation Question 10**

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

- 27 The legislation enables the Secretary of State to define what constitutes a 'criminal offence' and what constitutes 'official capacity' in the context of the General Principles Order. For the purposes of the revised General Principles Order, the Consultation Paper proposes that 'criminal offence' be defined as any conduct that has resulted in a criminal conviction.

**Consultation Question 11**

Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

- 28 The Government also proposes that for the purposes of the revised General Principles Order, 'official capacity' be defined as "being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority".

**Consultation Question 12**

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

**Model Code of Conduct for Local Government Employees**

- 29 In August 2004, the Office of the Deputy Prime Minister consulted on a draft Code defining the minimum standards of conduct that employees of relevant Authorities would be expected to observe when carrying out their duties. However, it was decided that the implementation of an Employees' Code should be delayed until the Government had an opportunity to consider the Employees' Code in the context of the wider review of the conduct regime for local government and the lessons learned from the implementation of the new Members' Code of Conduct. The Government considers that the time is now right to consult on proposals to introduce a model Employees' Code

- 30 The Consultation Paper states that a code of conduct for local government employees (the “Employees’ Code”) should provide the staff of an Authority with an effective ethical framework within which to work and it should give that authority’s citizens confidence that the Authority’s staff are working on their behalf in an appropriate manner.

### **Consultation Question 13**

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

- 31 The Government proposes that the Employees’ Code should apply to all relevant authorities and police authorities in Wales. It is also proposed that a model Employees’ Code - a model code that authorities may augment if they wish - be introduced, which will be incorporated into local government employees’ terms and conditions of employment.
- 32 However, the Consultation Paper does not propose to apply the Employees’ Code where it is not needed, for instance to employees in professions that are covered by their own code of conduct: firefighters, teachers, community support officers, solicitors etc.

### **Consultation Question 14**

Should we apply the Employees’ Code to firefighters, teachers, community support officers, and solicitors?

### **Consultation Question 15**

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

- 33 The Consultation Paper proposes a two-tier model of Employees’ Code. The first tier will apply equally to all Authority employees and will enshrine the core values that it is reasonably expected every Authority employee would abide by. The second tier will apply to ‘qualifying employees’: this will be either senior officials or those officials carrying out delegated functions.
- 34 The proposed Core Values that will be applicable to all employees are attached at Appendix 2. In brief, they cover:
- General principles
  - Accountability
  - Political neutrality
  - Relations with members, the public and other employees
  - Equality
  - Stewardship
  - Personal interests
  - Whistleblowing
  - Treatment of Information

- Appointment of staff
- Investigations by monitoring officers

### **Consultation Question 16**

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

- 35 In addition to the Core Values listed above the Consultation Paper proposes that additional values will apply to 'qualifying employees'.
- 36 The reasoning for this is that as Members have to abide by the requirements of the Members' Code of Conduct, there is a reasonable expectation that officials undertaking functions delegated to them by Members should have to abide by the same conduct regime as Members when performing those functions.
- 37 There are two alternatives for selecting those 'qualifying employees' to which, in addition to the core values of the employees' code, some of the additional restrictions and expectations of the Members' Code should apply.
- 38 The first is based on the approach taken to determining which posts in an authority are 'politically restricted' under section 3 of the Local Government and Housing Act 1989, and assumes that certain posts are senior or influential enough to warrant controls placed on the activities of postholders.
- 39 The second is the delegation model, which would see qualifying employees selected on the basis that they perform functions delegated to them by elected Members under section 101 of the Local Government Act 1972

### **Consultation Question 17**

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

- 40 As mentioned above, the Consultation Paper proposes additional requirements of 'qualifying employees'. The are listed in the Consultation Paper as follows:

#### Compromising the impartiality of officers of the Authority

A qualifying employee must not compromise, or attempt to compromise, the impartiality of anyone who works for or on behalf of the Authority, either directly or as a response to pressure from others. A qualifying employee should not attempt to force employees to take action or change advice if doing so would prejudice their professional integrity.

#### Using their position improperly

A qualifying employee must not use, or attempt to use, their position improperly either for their or anybody else's advantage or disadvantage.



### Considering advice provided to you and giving reasons

If a qualifying employee seeks advice, or advice is offered to them, on aspects of how the Employees' Code applies, the qualifying employee must have regard to this advice.

### Personal interest

Qualifying employees must register, within 28 days of taking up their appointment, any interests set out in the categories below. This record of interest must be in writing, to the Authority's Monitoring Officer or, in the case of a Parish Council, through the Parish Clerk.

- 41 Registration of personal interests will only be required in areas where there are clear grounds for concern that such an interest could give rise to accusations of partiality in decision making and working practice of the Authority. These are:
- Membership, or position of control or management, in bodies exercising functions of a public nature (that is, carrying out a public service, taking the place of a local or central governmental body in providing a service, exercising a function delegated by a local authority or exercising a function under legislation or a statutory power).
  - Any business the qualifying employee might own or have a share in, where that shareholding is greater than £25,000 or where the person has a stake of more than 1/100th of the value or share capital of the company.
  - Any contracts between the Authority and any company in which the qualifying employee has an interest, as above.
  - Any land or property in the Authority's area in which the qualifying employee has a beneficial interest.
- 42 A qualifying employee may seek to exempt their personal interests from the register of interests if they consider that having this information on record might put themselves or others at risk.

### **Consultation Question 18**

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

### **Consultation Question 19**

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

### Prejudicial interest

A prejudicial interest is considered to be a matter which affects the qualifying employee's financial interest or relates to a licensing or regulatory matter in which he or she has an interest and where a member of the public, who knows the relevant facts, would reasonably think that his or her personal interest is so significant that it is likely to prejudice his or her judgement of the public interest.

- 43 A prejudicial interest in a licensing or regulatory matter may stem from a direct financial interest or from a more tangential interest, where for instance approval for a licence may affect a body with which the qualifying employee has a personal interest or will affect him or her personally. Qualifying employees with a prejudicial interest should declare such an interest. Where possible, they should take steps to avoid influential involvement in the matter. Where this is not possible, their prejudicial interest should be made clear

#### **Consultation Question 20**

Does the section of the Employees' Code which will apply to qualifying employees capture all pertinent aspects of the Members' Code? Have any been omitted?

#### **Consultation Question 21**

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

#### Parish council employees

- 44 The Consultation Paper notes that the Members' Code of Conduct applies to Parish Councillors as well as members of larger authorities, and that it would therefore seem reasonable for the ethical framework of the Employees' Code to apply to Parish Council employees.
- 45 The Consultation Paper recognises that the environment that Parish Councillors operate within is different to that of larger authorities and that what is considered to be a reasonable expectation in the Employees' Code for larger councils, may prove to be difficult for Parish Councils.
- 46 That being the case, the Consultation Paper notes that the Government would welcome responses from Parish Councils on any particular aspect of the Employees' Code that might present difficulties, and how those difficulties could be overcome.

#### **Consultation Question 22**

Should the Employees' Code extend to employees of Parish Councils?

#### **Recommendations**

- 47 Members' views are sought in respect of the Consultation Questions contained in the Consultation Paper, and any other comments that Committee wishes to make in response to the consultation.

**Background Papers**

'Communities in Control: Real people, real power. codes of conduct for local authority members and employees': Department of Communities and Local Government: October 2008

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## **Employees' Code of Conduct: Proposed core values**

The proposed core values for all employees are

### **General principles**

The public is entitled to expect the highest standards of conduct from all local government employees. The role of such employees is to serve their employing authority in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

### **Accountability**

Employees are accountable, and owe a duty to, their employing authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

### **Political neutrality**

Employees, excluding political assistants, must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

### **Relations with members, the public and other employees**

Mutual respect between employees and members is essential to good local government and working relationships should be kept on a professional basis. Employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently and without bias.

### **Equality**

Employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

### **Stewardship**

Employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

### **Personal interests**

An employee must not allow their private interests or beliefs to conflict with their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to do business with the authority or which would benefit from a relationship with that authority. Employees should

not accept benefits from a third party unless authorised to do so by their authority.

### **Whistleblowing**

Where an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the model code of conduct for employees, the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the authority's confidential reporting procedure or any other procedure designed for this purpose.

### **Treatment of Information**

Openness in the dissemination of information and decision making should be the norm in authorities. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

### **Appointment of staff**

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

### **Investigations by monitoring officers**

Where a monitoring officer is undertaking an investigation in accordance with Part III of the Local Government Act 2000 and associated regulations, employees must comply with any requirement made by that monitoring officer in connection with such an investigation