

Appendix 4

Response sent to the Department for Constitutional Affairs and Local Government

1. Question 1

Disclosure of Confidential Information - Paragraph 3 (a)

- 1.1 The Code currently prohibits disclosure of confidential information. The amendment seeks to modify the prohibition as it currently fails to take into account the full implications of the European Convention on Human Rights.
- 1.2 The proposal seeks to introduce an exemption to this prohibition where a Member discloses such information in good faith, reasonably, and in the public interest. The Member must not have breached any reasonable requirements of the Authority (such as local protocols or procedures).
- 1.3 The DCLG expects the Standards Board to issue guidance to authorities on the interpretation of this exemption, highlighting examples such as exposing evidence of a criminal offence, failure to comply with legal obligations, danger to health and safety, and certain other cases.
- 1.4 It is not intended that the exemption should allow Members to plead “public interest” when they are really motivated by the desire to take political advantage. The Government are therefore considering whether to amend the drafting further to make it clear that the provision about confidential information covers not only information received by a Member in his or her official capacity, but also any information which relates to the work of the Council.
- 1.5 The Government asks whether the proposed text strikes an appropriate balance.
- 1.6 Officer Comments:
 - 1.6.1 The proposed new provision does appear to strike the appropriate balance and that the proposed drafting clarification mentioned above would be worthwhile. The clarification would remove argument and grey areas about how exactly a Member had come by confidential information relating to the authority.
 - 1.6.2 However, it is also recommended that the words “ including the written advice of the Monitoring Officer” be added to the rule not to breach “any reasonable requirements of the Authority”. This will underline the importance of any such advice given.

2. Question 2

Restricting breaches by a Member in their private capacity, to those activities that have been proved to be unlawful – Paragraph 4

- 2.1 The present Code provides in effect that a Member must not act in such a manner as to bring his or her office or authority into disrepute whether they are acting in their official capacity or not.
- 2.2 Doubt has been cast recently on both the desirability and the legality of provisions, which can cover all activity by a Member whether they are acting as such or not. The recent case (October 2006), involving the Mayor of London, turned on this point and the High Court ruled that a breach would only occur if there was a direct link between

the member's office and the action they had taken, eg the behaviour would only be caught if the Member used their office for private gain.

2.3 The Government proposes to deal with the legal problem by amending the Local Government Act 2000 to make it clear that the Code can apply to private conduct. This requires primary legislation and cannot be dealt with solely by amending the Code of Conduct. The Local Government and Public Interest in Health Bill seeks to address this.

2.4 The Government is also minded, however, to amend the Code to provide that conduct in a private capacity is only caught if it has resulted in a conviction for a criminal offence.

2.5 DCLG asks whether this is an appropriate restriction.

2.6 Officer Comments:

2.6.1 Any such amendment will no doubt eventually result in instances somewhere in the country where Members are found to have brought their office or authority into disrepute, but because the behaviour is not criminal in nature, it is not a breach of the Code of Conduct. However, the existing provision is the source of some anxiety to Members and is vulnerable to abuse by complainants. On balance, therefore, the narrowing of its scope is supported.

2.7 In addition, the Government proposes to make it clear that the 'disrepute' provision can cover circumstances where a Member committed a criminal offence before taking office, but was only convicted of that offence afterwards.

2.8 *Officer Comment:*

2.8.1 This appears reasonable – there may be damage to an authority's reputation if there is no apparent sanction against a Member guilty of a serious offence, which only came to light after he, or she was elected.

3. Question 3

The Code of Recommended Practice on Local Authority Publicity – Paragraph 5 (b)

3.1 The Government proposes to further amend this paragraph (about use of the authority's resources) to make it clear that Members should have regard to the Code of Recommended Practice on local authority publicity which prohibits political campaigning with local authority publicity budgets and provides instructions about content, style, and distribution.

3.2 DCLG asks whether the Code of Recommended Practice itself stills serves a useful purpose and if so whether it should apply to the Greater London Authority, Fire and Rescue authorities, and the National Parks authorities.

3.3 *Officer Comments*

3.3.1 The Publicity Code is useful and is based on legal requirements that such use of resources is unlawful. It's retention helps to provide clarity on a difficult area of law.

3.3.2 No objection is seen to the proposed addition to the Code of Conduct and it's application to other Authorities.

4. Question 4
Gifts and Hospitality- Paragraphs 7 & 8

4.1 Although Members are obliged to notify the Monitoring Officer of gifts or hospitality received in their official capacity over the value of £25, there is no provision for this information to be noted on a public register. The Government proposes to require such gifts to be noted in the register of Members' interests. This means that such gifts would have to be declared as personal interests where relevant at Committee meetings.

4.2 The proposed requirement also intends that only gifts or hospitality received up to 5 years previously should count as a personal interest.

4.3 *Officer Comments*

4.3.1 No objection is seen to making the notification of gifts transparent by having them recorded in a public register. Indeed under the Freedom of Information Act it is arguable whether the Council could withhold this information, and for consistency with the other registration requirements this amendment is supported.

4.3.2 However, due to the £25 limit it could lead to the declaration of many irrelevant matters at Committee. Officers believe it would be sufficient for there to be a separate public register of gifts and hospitality as is the case for MP's and that declarations of this kind need only be made if they are considered to create personal **and** prejudicial interests.

4.3.3 The value limit of £25 to trigger the requirement for registration is modest and has not been raised since the Code was first introduced in 2001. In addition, no thought appears to have been given to the position of Members who may receive many gifts in their official capacity, such as Mayors and Chairmen of authorities.

4.3.4 The requirement to declare all these as personal interests could be onerous. Even if they are not made personal interests, the registration requirement is still very burdensome for such Members (even a bouquet of flowers or an official dinner can easily cost over £25). Officers suggest this should be reviewed and raised to say £100.

5. Question 5
Redefining personal interests – Paragraph 7

5.1 At present a personal interest exists if a matter affects a Member, relative or friend to a 'greater extent than other Council Tax payers, ratepayers, or inhabitants of the authority's area'.

5.2 The Government proposes to-

5.2.1 Amend this to refer to a 'greater extent than the majority of other Council Tax payers ratepayers or inhabitants of the [affected] **ward**'.

5.2.2 To include in this list any person with whom the Member has a close personal association, but remove the present definitions of 'relative' or 'partner'.

5.2.3 To reduce the number of times on which Members have to declare interests, that are in fact, shared with a large number of people.

5.2.4 To make it clear that a Member is only deemed to be affected by a personal interest in respect of a family member, friend or person with a close personal association, if they were aware or ought reasonably to have been aware of the interest.

5.3 DCLG asks if the revised text adequately covers the breadth of relationships which ought to be covered.

5.4 Officer Comments

5.4.1 Restricting the geographical impact of this rule – This reflects concerns raised over the current code. However, it is doubtful whether in practice it will make much difference. In particular this will not override the Common Law requirement that Members should not “Predetermine” matters on which they are required to take a decision or on which they may either seek to influence the decision to be taken by other Members. This issue is addressed under the comments regarding “Prejudicial Interests”

5.4.2 Change the use of the word “friend” - This is unlikely to clarify matters very much. There is probably some improvement as 'a close personal association' is a little less variable in meaning than 'friend', but even so, how close is close? Would it, for example, include a colleague who worked at the next desk, but not one who worked on the other side of the building? Also, there are many people with whom one could be said to have a 'close personal association' but with whom one would not discuss private or business matters.

5.4.3 It is believed that this amendment will extend the definition of personal interests in unpredictable ways and is therefore inherently flawed.

5.4.4 'Interests' of which the Member is unaware - This appears sensible. It ameliorates to some extent (but not completely) the concerns about the extension of interests to those held by people with a close personal association.

6. Question 6

Additional exemptions to prejudicial interests – Paragraphs 9 & 11

6.1 It is intended to –

6.1.1 Extend the right to speak - A Member will not have a prejudicial interest where they attend a meeting to make representation, answer questions or give evidence, provided the committee agrees they may do so. After Members have answered such questions or given such evidence, then they must withdraw.

6.1.2 To simplify and amend the list of exemptions from the need to regard oneself as having a prejudicial interest (under paragraph 10), by providing that certain interests are simply not prejudicial (instead of leaving it to the Member and to add the following to the list:

- Indemnities from which the Member may benefit.
- The setting of Council Tax
- The question of whether that Member should become an honorary freeman.

6.1.3 To allow Members to attend a hearing of a Standards Committee in order to be able to defend him or herself.

6.2 DCLG asks whether this relaxation regarding prejudicial interests is appropriate, and whether there are any other exemptions which should be added.

6.3 *Officer Comments:*

6.3.1 Extending the right to speak- The principle and intent behind this is to free Members to better represent their constituents and is therefore supported. However, it does not address the concerns about “predetermination”, which could still lead to decisions being challenged.

6.3.2 It is therefore suggested that the reference is made to this potential conflict in the Code. Wording should be added to make it clear that where a Member has “predetermined” a matter they will be in breach of the Code even if otherwise they could have claimed an exemption under these paragraphs.

7. Question 7

Relaxing the rules to allow increased representation at meetings – paragraph 9

7.1 It is proposed that a new category of 'public service interest' be introduced with several implications.

7.2 The Government proposes to define such an interest as arising where a Member is also a Member of another public body. They would be required to note such interests in the register, but only declare the interest at a meeting if they actually speak. The intention is to avoid Members of other public bodies having to declare interests in possibly a number of items whether they intend to participate in the debate on them or not. There is also requires an amendment (dealt with under the answer to question 5) to the rules relating to participation with prejudicial interests.

7.3 Members with public service interests will only be deemed to have a prejudicial interest if the matter under discussion relates to the financial affairs of the body concerned or to the determination of an approval, consent, or similar for that body.

7.4 *Officer comments:*

7.4.1 There is no objection to this change in terms of limiting the times a member needs to declare interests. However, it is suggested that where such a Member intends to speak it would be preferable for clarity and understanding by the public that it be declared as personal in the usual way.

7.4.2 This would have the additional benefit of triggering Members to consider whether it is also prejudicial.

8. Question 8

Making the text more neutral

8.1 Some wording has been re-arranged – for example the list of personal interests now includes the wording formerly found only in the paragraphs relating to the register of interests, and gender inclusive language has been used.

8.2 DCLG propose using expressions like 'he or she' but asks if authorities would prefer the Code to be put in the second person, so that it could refer to 'you'.

8.3 *Officer comment:*

8.3.1 It is suggested that the current draft is appropriate for the purpose, but members may have a view on this to make the code more user friendly.

9. Other Changes not the subject of specific questions

9.1 To delete reference to “Unlawful discrimination” - Paragraph 2(2)(a)

9.1.1 This change has been recommended following comments made in January 2005 by the Adjudication Panel for England which found that it had no jurisdiction to make findings of unlawful discrimination (this being a matter for the courts).

9.1.2 The Government proposes to replace the provision with words prohibiting Members from doing anything that would seriously prejudice their authority's statutory duties in regard to equality. The requirement to treat others with respect would be retained.

9.1.3 *Officer Comment:*

There can be little objection to the principle of the provision. However proving that it has been broken is likely to be difficult in many cases.

9.2 Bullying - Paragraph 2 (2) (b)

9.2.1 It is intended to add a provision prohibiting bullying. This type of behaviour is prohibited under the existing Code by implication, and it is thought desirable that the Code should explicitly prevent bullying of other Members, of Officers, or anyone else.

9.2.2 No definition of bullying will be included in the Code, but the Standards Board intends to publish guidance on the issue. This will make it clear that bullying can occur both from patterns of behaviour and through individual incidents.

9.2.3 *Officer Comment:*

The Council has partly addressed this issue in the Member/Officer Protocol. However that only deals with “bullying as regards Members of Officers. The proposed modification would cover all relationships and is a good way to provide consistency and give this issue sufficient importance.

9.3 Using improper influence (paragraph 5a)

9.3.1 The Code prohibits Members from using their position as a Member improperly to secure an advantage or disadvantage for themselves or any other person. The Government wants to clarify this provision to make it clear that it covers unsuccessful as well as successful attempts to use a Member's position in such a way.

9.3.2 *Officer Comment:*

This is also supported.

9.4 Deletion of the duty to report breaches of the Code - Paragraph 7

9.4.1 The current duty to report such breaches by other Members, has been a source of confusion and anxiety, notwithstanding the general desirability of avoiding allegations of 'cover up'. In some authorities (not at this Council) it has been abused for political purposes.

9.4.2 The Government proposes to add a provision prohibiting Members from intimidating complainants and witnesses against them or other Members.

9.4.3 *Officer Comment:*

No objection is seen, although the proposed anti intimidation provision may be superfluous given the wording of other provisions in the Code eg as regards "bullying".

9.5 Bodies influencing public opinion or policy - Paragraph 8 and 15 (d)

9.5.1 The Government proposes to make it clear that such bodies (membership of which Members must declare in the register of interests) include any political party. This is already what is stated in Standards Board guidance. Adding it to the Code means breach will not rely on case law in the future.

9.5.2 *Officer Comment:*

This seems a sensible amendment.

9.6 Exclusion of Members from Overview and Scrutiny Committees

9.6.1 The present provision excludes Members from Overview and Scrutiny Committees, where they are scrutinising decisions taken by Committees or other member bodies of which that Member is also a Member.

9.6.2 It is proposed to extend this provision to make it clear that the exclusion covers cases where they were involved in a decision, whether or not they are now a Member of that Committee. Conversely, the exclusion is lifted if although normally a Member of the decision-making Committee, the Member in question was absent when the decision was taken.

9.6.3 *Officer Comment:*

This appears sensible.

9.7 Public Register of Interests

9.7.1 At present the whole register of Members' Interests is open to public inspection. The Government proposes to allow information to be withheld from public inspection where revealing it is likely to lead to the Member, or those with whom he or she lives, being subject to violence or intimidation.

9.7.2 This might apply, for example, to the home address of Members who are under some kind of security threat. The Member needs to apply to the Monitoring Officer, and if the Monitoring Officer agrees the information may be excluded from the register.

9.7.3 *Officer Comment:*

This seems sensible.

