

REPORT OF:	MONITORING OFFICER AND HEAD OF LEGAL & PROPERTY SERVICES
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TO:	STANDARDS COMMITTEE
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AGENDA ITEM NO:	4	WARD(S) AFFECTED:	ALL
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SUBJECT:	CONSULTATION ON PROPOSED CHANGES TO THE MEMBER CODE OF CONDUCT
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RECOMMENDATIONS:

1. That the proposed changes to the Member Code of Conduct are noted and the Monitoring Officer be authorised to make the representations to DCLG as set out in the report.

SUMMARY

1. This report invites the Committee to respond to the consultation paper issued by the Department for Communities and Local Government ("DCLG") on 1 October 2008.
2. It deals with 2 issues namely proposals to -
 - i) Revise the model Code of Conduct for councillors. The principal change intends to clarify the application of the code to councillors' acting in a non-official capacity; and
 - ii) Introduce a requirement for local authorities to incorporate a code of conduct for staff into the terms and conditions of their employees, based on a statutory model.
3. Only the proposed revisions to the Member Code are dealt with in this report. Those for an Officer Code of Conduct are considered elsewhere on this agenda.

The Standards Committee has authority to determine this recommendation.

STATUTORY POWERS

1. The Local Government Act 2000 ("the LGA 2000") introduced the requirement for members to comply with a Code of Conduct and made the Standards Committee responsible for ensuring high standards of ethics and probity by Councillors. The Current code was adopted with effect from 1st September 2007.

2. A response to the consultation falls to be considered by the Standards Committee under paragraph 1.1 of its terms of reference but any ultimate change to the Code must stand referred to Full Council.
3. There is also a proposal to introduce an Officer Code of Conduct for which there is no statutory requirement, although many of the proposed obligations are already set out in either the employees terms and conditions of employment or the rules adopted by the Council and set out in the Constitution. That aspect of the consultation is dealt with in the following report on this agenda.

ISSUES

Background

4. The Government had always intended that the Code should apply, at least to some extent, to the conduct of councillors acting in a non-official capacity. This was also the understanding of those who advised on and used it. However, a court judgment in 2006 made it clear that interpretation was unfounded. From that date, only conduct linked to the performance of public duties was deemed to be covered by the Code. As a result, the Government now wishes to clarify which provisions of the code apply to councillors' conduct in a non-official capacity.
5. The Government clearly considers that certain behaviour, even where there is no direct link to their official role, can have an adverse effect on the level of trust in councillors and local government as a whole. DCLG has, therefore, published a consultation paper on proposals to amend the Code to prohibit conduct that would constitute a criminal offence, which is discussed in paragraphs 7 to 13 below. A number of other minor drafting amendments are also proposed to clarify various existing provisions of the Code. These are considered in paragraphs 14 to 20 of this report.

Proposals Relating To Councillors Acting In Their Non-official Capacity

6. The Government intends that the Code should apply explicitly to councillors acting in a non-official capacity where their conduct would constitute a criminal offence and proposes the inclusion of the following provision:

“Members must not bring their office or authority into disrepute by conduct which is a criminal offence.”

7. For the purposes of the Code, criminal offence would be defined as any criminal offence for which the councillor has been convicted in a criminal court, but for which there is not an opportunity of paying a fixed penalty instead of facing a criminal conviction. This would exclude certain offences from the remit of the Code, such as those relating to motoring, parking and littering, as well as instances where cautions are given or other orders falling short of a conviction by a court. A criminal conviction in a foreign country would come within the remit of the Code, but only where the conduct would also constitute a criminal offence in the UK.

8. Official capacity would be defined as being engaged in the business of the Council, including the business of the office to which the Councillor has been elected or appointed, or where they are acting, claiming to act or giving the impression that they are acting as a representative of the Council.
9. In accordance with existing practice, it is proposed that investigations into allegations regarding councillors' conduct in a non-official capacity would only be triggered by a written allegation submitted to the Standards Committee.
10. Where an allegation involved criminal activity being investigated by the police or prosecuted through the courts, any Standards Committee procedures would be held in abeyance until the conclusion of the criminal procedure, including any appeals process. This would mean the Councillor could not be sanctioned until after that process had concluded and a full investigation completed under the Code.
11. The Code currently incorporates ten general principles, based upon the principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the code, which must be consistent with them.
12. The Government proposes to amend the Code to make clear that the existing ten principles would be applied to councillors acting in an official capacity but that the following new principle would specifically be applied when acting in a non-official capacity:

"Duty to abide by the law

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

13. In connection with these new provisions, it should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by Section 80 of the Local Government Act 1972, with the Councillor being automatically disqualified from office for five years.

Membership of Other Bodies

14. Paragraphs 8(1)(a)(i) and (ii) of the code state that a councillor has a personal interest in a matter being considered by the Council if it relates to a body exercising functions of a public nature of which they are a member. Whilst this seems obvious, it has been suggested that the Code should be amended to clarify beyond doubt that this does not include the Council itself.

Personal Interests

15. Paragraph 8(1)(a) of the Code lists the circumstances in which councillors would have a personal interest in the business of the Council. This includes

business affecting the interests of any person from whom a councillor has received a gift or hospitality with an estimated value of at least £25.

16. Whilst paragraph 13 of the Code requires that councillors register details of interests falling within the categories set out in paragraph 8(1)(a), it is suggested that paragraph 8(1)(a) should specifically state that a councillor is required to register a gift or hospitality with an estimated value of at least £25. There is no reason to object to this clarification, as in practice this is what the Code already requires.

Prejudicial Interests

17. Paragraph 10(2) of the Code states that a councillor with a personal interest **does not** have a prejudicial interest in a matter if it (in summary):
 - (a) **Does not** affect their financial interests or those of associated persons or bodies; and
 - (b) **Does not** relate to the determining of any approval, consent, licence, permission or registration in relation to them or an associated person or body.
18. It is suggested that the double negative in the above provisions should be removed and instead the Code should state that a councillor **does have** a prejudicial interest if it affects their financial interests or any approval, consent and so on. This seems a sensible suggestion.
19. DCLG also proposed that the meaning of determining in paragraph (b) above could be clarified to include "variation, attaching, removing or amending conditions, waiving or revoking applications etc". It should be noted that when adopting the new Code a similar clarification was added to the version adopted by the Council. This is therefore supported.
20. Finally, it is suggested that paragraph 10(2)(c) could be amended to state that a councillor would not have a prejudicial interest in a matter when giving evidence at a standards committee hearing regarding an allegation of misconduct. This too is a useful clarification.

Conclusions

21. The proposals would have the effect that the only conduct in a councillor's non-official capacity covered by the code would be conduct that constitutes a criminal offence. The code could only be applied in these circumstances when evidenced by the criminal conviction of a councillor in the courts. The Monitoring Officer supports the proposed amendments to the Code to bring these provisions into effect. The Committee may wish to consider whether it feels this is drawn sufficiently wide.
22. The other drafting amendments to the code are intended to clarify various existing provisions. They reflect the way in which the Council already has and would interpret the code and it is recommended that no objections be raised to the amendments proposed.

LEGAL IMPLICATIONS

23. These are set out in the report

FINANCIAL IMPLICATIONS

24. There are none

Background Papers: DCLG consultation paper - Communities in Control: Real people, real power. Codes of Conduct for Local Authority Members and Employees