

**STANDARDS COMMITTEE 5<sup>th</sup> March 2007**

Report Title: Consultation Paper on Amendments to the Model Code of Conduct for Councillors.

Forward Plan reference number (if applicable): **N/A**

Report of: **Head of Legal Services and Monitoring Officer.**

Wards(s) affected: **All**

Report for: **Non – Key Decision.**

**1. Purpose**

1.1 This report provides details of the proposed changes to the code of conduct for Councillors and recommends responses to the Government's consultation on the proposed changes. A copy has been sent to all members with an invitation to attend the Standards Committee and join the discussion if they wish.

**2. Recommendations**

2.1 To agree a response to the consultation.

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**3. Executive Summary**

3.1 This report provides details of the proposed changes to the code of conduct for Councillors and recommends responses to the Government's consultation on the proposed changes.

**4. Local Government (Access to Information) Act 1985**

4.1 Revised Model Code of Conduct & consultation paper.

## 5. Background

- 5.1 The Department of Communities and Local Government (DCLG) published a consultation paper seeking views on the draft of a proposed new model code of conduct for local authority members on 22 January 2007. The closing date for responses is 9 March.
- 5.2 The Government's stated intention is "to put in place a clearer, simpler and more proportionate code of conduct for members of Local Authorities which includes changes to the rules on personal and prejudicial interests".
- 5.3 The Local Government Act 2000 set the ethical framework for local government on a statutory basis. Section 50 of the Act enabled the Secretary of State to introduce a model Code of Conduct and subsequent sections required Councils to adopt their own code on the basis of the model. Haringey Council formally adopted the model code of conduct and it is incorporated into the Council's Constitution.
- 5.4 The Government intends to bring the amended code into force in time for Local Authorities to adopt it at their annual meetings in May 2007.

## 6. Description

- 6.1 Circulated with this report are:
  1. A copy of the consultation paper,
  2. The draft model code of conduct Regulations (Annex A), and
  3. The specific questions posed by the consultation paper (Annex B).
- 6.2 The draft Regulations involve the production of a single mandatory model code.
- 6.3 The scope of the proposed new code of conduct is broadly unchanged. However, the draft revised code seeks to:
  - Reflect the recommendations of the Standards Board for England following their review of the current code.
  - Reflect Adjudication Panel for England and High Court decisions on interpretation, for example on discrimination, private capacity, disclosure in the public interest.
  - In certain circumstances, to allow a Member to make representations but not vote whilst having a prejudicial interest.
  - Improve the structure and drafting of the code.
  - Improve some definitions.
- 6.4 The draft revised code provides a number of relaxations from the requirements of the current code. In particular it:
  - removes the obligation to report allegations of failure to comply with the code. (*The deletion of the duty on Members to report breaches by other*

*Member will be welcomed. It will not, of course, prevent Members from reporting such breaches, but takes away the obligation to do so).*

- limits the obligation to disclose a personal interest of a family member, friend or person having a close personal association to those that the Member is aware of, or ought reasonably to be aware of.
- creates a new category of public service interest as to membership of another relevant authority, public authority or body the Member is appointed to by the authority.
- provides for a Member, who otherwise has 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. *(A personal interest still needs to be disclosed by the Member. Meetings will require careful managing to ensure such Members are excluded from the decision making part of the meeting).*

6.5 The draft revised code also imposes additional specific obligations on Members such as:

- Not to bully any person.
- Not to intimidate a person involved in proceedings under the code.
- Extends the meaning of political purposes in the use of the Authority's resources provision to specifically include 'party political purposes'.
- Extends the provision on use of the authority's resources to include having regard to the Local Authority Code of Publicity. *(There is a logic to this otherwise breaches would not be subject to sanction under the ethical framework, but the Code of Publicity - published in 1986 - is in need of review), and*
- An extended obligation to have regard to the advice of the Monitoring Officer and the Chief Finance Officer.

6.6 The new provisions on bullying follow a concern by the Standards Board for England at the level of bullying occurring within Councils. Clear guidance will be needed from the Standards Board for England, given that the code does not clearly define bullying, in order for Members to understand what types of behaviour are acceptable and what go beyond the bounds of acceptability.

6.7 The proposed main changes are summarised for ease of reference in Appendix 1. It is assumed that many of the changes, particularly the relaxations, will be welcomed by Members. The consultation questions and some suggested responses are set out in Appendix 2 for Members' consideration.

## **7. Omissions**

7.1 The opportunity to bring the application of the code and the law of bias closer together has not been taken in the draft. It would be helpful if there was an express reference in paragraph 9 of the code under the heading "Prejudicial interests" to the fact that a Member should not participate in decision-making, even if there is no prejudicial interest, if such participation is likely to give rise to

a real possibility of bias. Such a provision would provide a direct link between the common law test of bias and the member code, reinforcing the principles which need to be applied by Members in determining whether to participate in decision making.

## 8. Clarity needed

- 8.1 Whilst the redraft helps to improve clarity, it would seem sensible to go one stage further and include all the bits dealing with 'public service interests' in a separate paragraph. – 8(2), 8(7)(a)(i), (ii) and (iii), 9(2) and 9(4)(b). Having different definitions for public service interest in 8(7)(a) and 9(4) is confusing.
- 8.2 There are a number of new phrases in the draft Code of Conduct which now require definition, including –
- a. "Close personal association" – Paragraph 7(c)(i) -this clearly extends beyond mere friendship, but how far? Does "personal" in this context mean that it does not include work colleagues?
  - b. "Family" – Paragraph 7(c)(i) - the current Code uses the word "relative" and defines "relative". The new Code uses "family", but fails to define it. Is it the member's household, irrespective of blood relationship? Or is it blood relatives even if living separately? What degree of separation takes an individual outside the scope of "family"?
  - c. "Lobbying Organisation" – Paragraph 9(4)(b) - is it a lobbying organisation because it occasionally lobbies, or does it have to lobby Members or Local Authorities, or does it have to spend a specified proportion of its annual expenditure on seeking to influence public opinion?
  - d. "Of a financial nature" – Paragraph 11(2) - what is it that makes an interest "of a financial nature"? Is it that the Member or a friend, or an associated body, stands to gain or lose financially in any way, or does the gain have to be primarily financial, or more directly to the Member him or herself?
  - e. "Philanthropic Organisation" – Paragraph 9(4)(b) - Is this the same as "a body directed to charitable purposes", or does "philanthropic" extend beyond the charitable objects in the Charities Act 2006.
  - f. "Relates to" – This phrase is used repeatedly throughout the new code, in a number of different contexts and its widespread use may create real problems of interpretation for the future.
- 8.3 The requirement in 8(2) only to have to disclose a public service interest when speaking seems strange. Members are now accustomed to disclosing interests at the beginning of the meeting. There does not seem to be any value gained by changing from disclosure at the beginning. Also,

this means if the Member does not speak, there is no requirement to declare the public service interest. It may seem very odd to a member of the public for one Member to disclose an interest and another not (because s/he did not speak) when both take part in the decision by voting. From an evidential aspect, in a subsequent investigation, the question of whether a Member spoke or not will be more difficult to investigate, than whether the interest was declared or not.

## **9. Summary and Conclusions**

- 9.1 The draft revised Code of Conduct appears to be a conscientious attempt to improve the present code and to resolve some of the issues which have arisen with it. However, there are other issues and unresolved problem areas, not covered by the consultation questions, which also require comment. These are set out above.

## **10. Recommendations**

- 10.1 This report provides an overview of the new provisions. Members are invited to consider and comment on the contents of the report, the consultation paper and the proposed responses to the questions posed.

## **11. Use of Appendices / Tables / Photographs**

- Appendix 1 - Proposed main changes to the code.  
Appendix 2 - Suggested responses to the specific questions.  
Appendix 3 – Consultation paper.

## APPENDIX 1

The proposed main changes to the code are to:

1. Have one consolidated code covering all authorities to replace the 4 codes currently in existence.
2. Remove the proscription on unlawful discrimination on the grounds that only the courts can make a determination on that.
3. Specifically proscribe bullying – about which SBE has been concerned for some time.
4. Allow for the disclosure of confidential information where it is in the public interest to do so.
5. Require a Member not to bring the authority into disrepute. Offending conduct would extend to that performed in the Member's private capacity provided that:
  - a) The conduct has been subject to a successful prosecution; and
  - b) The current Local Government & Health Bill amends sections 49 and 52 of the Local Government Act 2000. This effectively overturns the Ken Livingstone decision.
6. Require regard to be paid to the Government's local authority publicity code.
7. Delete the requirement to report suspected breaches of the code by other Members.
8. Require gifts and hospitality of over £25 in value to be registered in the register of members' interests. (Currently there is a separate register for such matters).
9. Require the disclosure of such gifts or hospitality at a meeting within five years of such registration.
10. Define personal interests as including the well-being or financial position of the Member, family, friend or 'any person with whom the member has a close personal association. This covers a range of personal, business and professional associates. A close personal association is not defined.
11. Define a personal interest as one affecting the Member to a greater extent than the majority of his or her ward residents and thereby reduce the likelihood of there being a declarable interest.
12. Create a 'public service interest', defined as membership of another local authority or a management or control position of a public authority or with reference to a body to which the Member is appointed by the Council. A public service interest is a personal interest declarable if the Member speaks on an item in committee.

13. Provide that a public service interest would not be a prejudicial interest barring participation in debate, unless it affects the financial affairs of the body concerned or it relates to an approval, consent, licence, permission or registration of that body.
14. Provide that a Member with a prejudicial interest may, with the consent of the meeting, attend a meeting for the purpose of making representations, answering questions or giving evidence but must then withdraw from the room. This will require careful management of the meeting.
15. Proscribe the intimidation of complainants and witnesses in cases of complaint to the SBE or Monitoring Officer.
16. Extend the exemptions where Members should not regard themselves as having prejudicial interests to include:
  - a) where indemnities are being considered;
  - b) the setting of council tax;
  - c) where the Member is being considered for the honorary award of Freeman.
17. Provide that Members are excluded from scrutiny committees where decisions are being considered of a body in which he or she took part.
18. Enable a member to apply to the Monitoring Officer to obviate the need to register 'sensitive Information, such as employment in certain types of scientific research, where it is perceived that there is a serious risk that the Member or a person who lives with him or her, may be subjected to violence or intimidation.
19. Enable a Member not to disclose the details of that 'sensitive information' when declaring an interest in committee, although there would still be a need to disclose that there is a personal interest.

## APPENDIX 2

Specific Questions and Suggested Response.

**Q1. 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?**

The proposed amendment incorporates the requirements of Article 10(1) of the European Convention on Human Rights (freedom of expression). In practice it will be extremely difficult for a Member to weigh up the balance of competing interests of preserving confidentiality on the one hand and the restricted number of cases where it would be defensible to disclose that information on the other. It would be difficult to determine when disclosure will be “reasonable and in the public interest”.

The code does not make it clear whether it is a two part test, namely that the disclosure must be reasonable and in the public interest and made in good faith, or whether there is a defence if either of these tests can be satisfied. The paragraph also requires clarification so that the proscription applies solely to those areas where the Member received the information in his or her official capacity and not as a private individual or in any other capacity.

**Q2. Subject to powers being available to us 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 a Member’s private capacity to those activities which have already been found to be unlawful by the courts, appropriate?**

This suggests that the code only applies to activities in a Member’s private capacity, which have already been found to be unlawful by the courts. There is a range of conduct which could arguably be said to bring a Member’s office into disrepute which falls short of conduct capable of founding a criminal conviction e.g. anti-social behaviour. However by referring to a criminal offence in paragraph 4 it suggests that there is a high threshold of behaviour which could be countenanced before action under this paragraph of the code would be contemplated.

Note: The Livingstone Case has currently limited the scope of the code of conduct in a Member’s private capacity only to conduct where it can be established that there is a direct link with the Member’s office. However, there is a provision contained in the Local Government and Public Involvement in Health Bill, which if enacted, will make it clear that behaviour in a private capacity can be included within the remit of the code.

**Q3. 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 issues 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?**

In practice the Publicity Code is a useful tool which assists Local Authorities and Members in addressing sensitive issues at sensitive times, for example, in the run up to elections. Whilst the provisions of the publicity code need to be reviewed, such a review could consider how best to assist authorities currently not subject to its remit.

**Q4. 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?**

The provisions regarding gifts and hospitality seem excessive. In practice most authorities maintain a separate gift and hospitality register. To translate gifts and hospitality of a value of £25 into interests requiring registration and declaration seems unnecessarily bureaucratic and burdensome, particularly when a bunch of flowers, which are arguably a token of appreciation rather than an imputation of ulterior motive, can cost £25. Furthermore, the requirement for disclosure of such an interest for a period of 5 years after registration also seems excessive (not least for Members in remembering that they had received such gifts or hospitality). The £25 should be increased and the period reduced to, £50 and 2 years.

There should also be clarification in respect of gifts and hospitality received by the Mayor of the Council in his/her capacity as Civic Head. Most Local Authorities adopt a very sensible approach in that such gifts and hospitality are not declared under the code where they are received as a direct consequence of the office, but it would be preferable if this could be clarified beyond doubt, if not within the code itself, then by express guidance from the Standards Board. In any event most gifts (beyond flowers and chocolates) received by the Mayor are invariably regarded as gifts to the Council not the individual concerned.

**Q5. 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?**

There has been difficulty in the existing code in Members determining who constitutes a friend. This will be compounded by the new requirement to consider not only friendship but also close personal associations. Very clear guidance will be required from the Standards Board on this, ideally with a clear test which will be easy to apply.

It is always going to be difficult to describe adequately the concept that it is the close association between a Member and other people involved in an issue under debate which will give rise to the perception by onlookers of inappropriate dealing. In that respect it is not clear what is added by the word 'personal' in the phrase 'close personal association'.

**Q6. 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?**

Three new items have been added. These seem sensible and to be welcomed.

**Q7. 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?**

In practical terms the provision is likely to give rise to the need for very clear procedures to be adopted by the meeting to ensure that the Member does withdraw from the room at a particular point. It would be useful to clarify that withdrawal should have taken place prior to a decision being reached. It is not clear whether the Member may stay for the debate.

**Q8. 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?**

The draft code is written in language that is intended to be user friendly. It is clearer and more understandable although the lack of definitions creates ambiguity in many places.