

Report of	Meeting	Date
Monitoring Officer	Standards Committee	11 December 2008

COMMUNITIES IN CONTROL: REAL PEOPLE, REAL POWER CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES – A CONSULTATION

PURPOSE OF REPORT

1. To update the Standards Committee on the content of the Consultation Paper Communities in Control: Real People, Real Power Codes of Conduct for Local Authority Members and Employees received from the Department for Communities and Local Government.

RECOMMENDATION(S)

2. To consider the proposed responses to the consultation questions and approve their submission in their present or an amended form.

MONITORING OFFICER SUMMARY OF REPORT

3. On 2 October 2008 the Department for Communities and Local Government commenced consultation with Local Authorities on the Consultation paper Communities in Control: Real People, Real Power Codes of Conduct for Local Authority Members and Employees. The consultation ends on 24 December. The consultation paper can be found at <http://www.communities.gov.uk/publications/localgovernment/codesconductconsultation>
4. The Consultation paper proposes
 - a. A revised Code of Conduct for Members to replace the Code adopted in May of last year; and
 - b. A new Code of Conduct for Local Authority Officers.
5. The consultation paper details the proposed amendments to the Code of Conduct and asks a total of 22 questions to obtain the views of Local Authorities on them. A list of the questions is at Annex A to the Consultation Paper.
6. This report will consider the proposals and outline proposed responses.

CONSULTATION - GENERALLY

7. Chapter 2 of the Consultation paper starts by considering the general effect and application of the Code. It confirms that the public expect high standards of conduct from their elected and co-opted members and that it is an appropriate time to review the Code that was introduced last year to incorporate the experiences of the Standards Board as to its effectiveness.

8. The first general consideration is the application of the Code of Conduct to Members when not acting in their official capacity. The Consultation paper makes it clear that it was always the intention that the Code would apply to members conduct in a non-official capacity in limited circumstances. The current view is that those circumstances should be where they there is misconduct that constitutes a criminal act.
11. There is no intention to alter the existing legal provision concerning automatic disqualification for a conviction resulting in a custodial sentence of more than 3 months.
12. The Consultation paper proposes;

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

The question asked however is somewhat different.

“Q.1 Do you agree that the members’ Code should apply to a member’s conduct when acting in their non-official capacity?”

It is proposed to respond as follows

“A.1 The Standards Committee agree that the Code should apply when members are acting in a non-official capacity in certain circumstances. The Standards Committee agree that a member’s conviction for a criminal offence when they are not acting in an official capacity should be a circumstance where the Code of Conduct should apply.

“The Standards Committee’s understanding of the amendments made to the primary legislation by the 2007 Act is that they enable the Code to apply to criminal behaviour even where there is no conviction. The Standards Committee consider that the Code should cover this wider range of misconduct. There are many reasons why a case may not result in conviction e.g. public interest decisions by the CPS not to prosecute, evidence only being capable of proving a case to the civil and not criminal standard, perverse Jury decisions etc. There may even be cases where serious findings of fact are made against a Councillor in civil proceedings (perhaps brought by his own Authority) which, under the current proposals, would be ignored for the purposes of the Code. This would surely bring the ethical regime into disrepute.

13. The second consideration is the definition of what constitutes a criminal offence and official capacity. The Consultation paper seeks to define this for the purpose of the operation of the Code as a conviction for any offence for which the member does not have the opportunity of paying a fixed penalty notice rather than face a conviction.

“Q.2 Do you agree with this definition of “criminal offence” for the purposes of the members code? If not, what other definition would you support, for instance should it include police cautions? Please give details.”

It is proposed to respond as follows

“A.2 The Standards Committee do not accept the definition of “criminal offence” as proposed. Instead the Standards Committee would propose the following definition-

“A criminal offence for the purpose of the Code of Conduct **will include** all criminal acts for which the member has been or could be convicted by a court; it **will not include** criminal acts resulting in a fixed penalty notice, **unless** the criminal act is one that is usually prosecuted by a local authority.”

The Standards Committee believe that a criminal act that relates to dishonesty or places the member in conflict with their local authority should always be treated as a breach of the Code of Conduct.”

14. The Consultation paper defines official capacity as being engaged in the business of your authority, including the business of the office to which you have been appointed/elected or where you are acting/claiming to act/giving the impression you are acting as a representative of that authority.

“Q.3 Do you agree with this definition of “official capacity” for the purpose of the member’s code? If not what other definition would you support? Please give details.”

It is proposed to respond as follows –

“A.3 The Standards Committee agree with the proposed definition of official capacity save to include the following “where a member of the public would reasonably believe the member is holding themselves out to be acting in their official capacity”.”

15. The Consultation paper also proposes that a criminal offence, as defined above, committed abroad would constitute a breach of the code.

“Q.4 Do you agree that the members’ code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?”

It is proposed to respond as follows –

“A.4 Subject to the amended definition of criminal offence as detailed at A.2, the Standards Committee agree with the application of the Code to convictions received by a member abroad.”

16. **“Q.5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?”**

It is proposed to respond as follows –

“A.5 The Standards Committee recognise that there would be difficulties in investigating this type of breach of the code prior to the resolution of the criminal process and, if a criminal conviction is required before a breach is established, then it is difficult to see what merit there could be in undertaking an early investigation. However, this does highlight a pitfall of using the “criminal conviction” criteria to deal with behaviour outside a Member’s Official Capacity. If there is a long gap between the complaint and conviction there is a risk of the system being brought into disrepute if no action is taken in the intervening period.

THE CODE

17. The Consultation paper then details additional proposed revisions to the members’ code.

Parish Councils

It is proposed to make the adoption of paragraph 12(2) of the model code of conduct mandatory for parish councils. At present adoption of this paragraph, which allows members to have the same rights to speak as a member of the public where they have a prejudicial interest in an item, is optional.

Membership of other Bodies

It is proposed to clarify that paragraph 8(1)(a)(i) and (ii) of the code be amended to make it clear that these provisions do not apply to the authority itself.

Personal Interests

It is proposed to amend the wording of paragraph 8(1)(a) to clarify that members must register a gift or hospitality with an estimated value of £25 in their register of interests and not the interests of those who have offered the gift or hospitality .

Prejudicial Interests

It is proposed –

- That the wording of paragraph 10(2) be improved by removing the current double negative.
- That “determining” in paragraph 10(2)(b) be further defined to include “variation, attaching, removing or amending conditions, waiving or revoking applications”.
- That paragraph 10(2)(c) be amended to clarify that no prejudicial interest exists where the Member is giving of evidence before a standards committee relating to a allegation that he or she has failed to comply with the code of conduct.

Registration of Members’ Interests

It is proposed that interests registered pursuant to the 2007 code will not need to be re-registered if the new code is adopted.

“Q.6 Do you think that the amendments to the members’ code 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?”

It is proposed to respond as follows –

“A.6 The Standards Committee agree with the proposals.

“Q.7 Are there any aspects of conduct currently in the members’ code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?”

It is proposed to respond as follows –

“A.7 Paragraph 9(2) of the Code has no obvious value and should be deleted.”

“Q.8 Are there any aspects of conduct in a member’s official capacity not specified in the members’ code that should be included? Please give details.”

It is proposed to respond as follows –

“A.8 No comments.”

18. Other than its adoption by the Council the current code of conduct does not require members to specifically confirm that they will abide by its terms. It is proposed that members will have to give an undertaking in writing that they will observe its terms. Failure to do so will mean that the member will cease to be a member of the authority.

“Q.9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members’ code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?”

It is proposed to respond as follows –

“A.9 The Standards Committee accept that it is desirable for members to provide such an undertaking as it will ensure that members have read and appreciate their obligations under the code. The Standards Committee also agree that 2 months should be sufficient time to provide such an undertaking.

However, the Standards Committee feel that the sanction of ceasing to be a member of the authority to too severe. Such a sanction, the immediate removal as a member, will mean that the authority will be obliged to have a by-election. This will be an onerous burden financially and in terms of resources. It is thought by the Standards Committee that it would be more appropriate for failure to supply the undertaking to be dealt with by the Standards Committee or Standards Board for England.”

THE GENERAL PRINCIPLES

19. The Consultation paper restates the 10 General Principles which govern the conduct of members contained in the Local Authorities (Model Code of Conduct) Order 2007 and proposes an additional General Principle, not to commit a criminal offence. This new Principle would apply when the member is acting in a non-official capacity. This additional General Principle states

“Duty to abide by the law

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

It is proposed that criminal offence be defined as any conduct that has resulted in a criminal conviction, and that 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.

“Q.10 Do you agree with the addition of this new general principle, applied specifically to conduct in a members non-official capacity?”

It is proposed to respond as follows –

“A.10 The Standards Committee consider that this is an unnecessary amendment and the duties to act with honesty and integrity and to uphold the law contained in the current general principles clearly already cover the situation.“

“Q.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?”

It is proposed to respond as follows –

“A.11 If the amendment is to be made then the Standards Committee believe that the same definition of “criminal offence” should be used for the purpose of the General Principles as for the Code.

“Q.12 Do you agree with this definition of “official capacity” for the purpose of the General Principles Order?”

It is proposed to respond as follows –

“A.12 The Standards Committee believe that the same definition should apply for the purpose of the General Principles as for the Code.

MODEL CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES

22. It is difficult to consider the consultation on this issue as no model code is provided. The Consultation paper is also quite short on detail, being unclear as to who it is intended should be bound by such a code and the nature of the obligations. Neither does it state how it is to be enforced ie by reporting to the Standards Committee or by Employment Tribunal.

What the consultation does query is whether a code should apply to employees who already have their own code of conduct.

“Q.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.”

It is proposed to respond as follows –

“A.13 The Standards Committee sees little need for a national Code of Conduct for employees. The conduct of employees is governed by their contracts of employment which provide ample opportunity to deal with any conduct which might bring their employer into disrepute. Indeed the obligations, in some respects, go further than the Code in their application to an employee’s private life. Chorley Council, as with many other Councils has had its own Code of Conduct in place for many years. ”

“Q.14 Should we apply the employees’ code to firefighters, teachers, community support officers and solicitors?” (*employees who already have a code of conduct*)

It is proposed to respond as follows –

“A.14 If the code of conduct does not apply to all staff then it may divide the workforce. Any issues which arise where an employee is bound by a conflicting professional code could be dealt with by making the national Code subject to any other Codes – as is presently the case to some extent for elected Members”

“Q.15 Are there any other categories of employees in respect of whom it is not necessary to apply the code?”

It is proposed to respond as follows –

“A.15 None of which the Standards Committee are aware.”

PROPOSED CORE VALUES

23. The Consultation paper outlines 11 core values which are the equivalent to members General Principles. They are as follows:-

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 utilize property, vehicles or other facilities of the authority for personal use unless authorized 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.

It is interesting to note that there are more core value obligations placed on employees who are already bound by a contract of employment than there are general principle obligations placed on members.

“Q.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?”

It is proposed to respond as follows –

“A.16 If it is appropriate to have a code of conduct for employees then the proposed core values are a correct reflection.”

QUALIFYING EMPLOYEES

24. Qualifying Employees are those to which in addition to the core values some of the restrictions of the members code should apply. The Consultation paper proposes two bases in which Qualifying Employees should be defined. The first approach is to use employees in posts which are politically restricted under section 3 of the Local Government and Housing Act 1989; the second is a delegation model which considers what functions have been delegated to the employee by elected members.

“Q. 17 Should the selection of “qualifying employees” be made on the basis of a “political restriction” style of model or should qualifying employees be selected using the delegation model?”

It is proposed to respond as follows –

“A.17 The Standards Committee submit that neither model is wholly adequate. Schemes of delegation differ markedly between Councils and any model based on this would therefore lead to inconsistency across the Country. The “political restriction” model is better but the definition of “Deputy Chief Officer” within that model is far too wide since, depending on the structures in place within a Council, it can cover very junior members of staff.”

QUALIFYING EMPLOYEES – ADDITIONAL VALUES

25. The Consultation paper sets out values which will apply to Qualifying Employees in addition to the core values. These are –

- Compromising the impartiality of officers; This includes not forcing employees to take action or change advice if this would prejudice their professional integrity.
- Using your position improperly; to either your own or anybody else’s advantage or disadvantage.
- Considering advice provided to you and giving reasons; If advice is received requested or otherwise, on the operation of the employees code then regard must be had to this advice.
- Personal Interest; Qualifying Employees will be required to register in writing with the monitoring officer any interests falling in certain defined categories.

“Q.18 Should the code contain a requirement for qualifying employees to publicly register any interests?”

It is proposed to respond as follows –

“A.18 No. A public register is an unnecessary interference in employee’s privacy. In general any register should be accessible only to the manager of the Member of Staff. There may be an arguable case to go further than this for the most senior employees but this should still not be a public document. Access should be restricted - perhaps to auditors and Members.

This question also highlights the interesting issue of what standards should be applied to those providing services for Councils on an outsourced basis. Is there any good reason to treat these employees any differently from those engaged on an in house basis?”

“Q.19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?”

It is proposed to respond as follows –

“A.19 If such criteria were adopted then they should be limited to financial matters only.”

PREJUDICIAL INTERESTS

26. The Consultation paper recognises that Employees with a prejudicial interest in a matter may still be required to participate in the decision making process. It suggests that the ideal is that the employee should pay no part in such a decision, however where it is unavoidable they can continue to participate provided that the existence of the prejudicial interest is clear.

“Q.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?”

It is proposed to respond as follows –

“A.20 It seems difficult in principle to reconcile the prohibition on members participating in decision making where they have a prejudicial interest with the more flexible approach for Officers. Equally though officers should not be hampered in making day to day decisions, sometimes urgently by seeking to apply a rule book. The simple question should be: “Will this action bring my Authority into disrepute? The answer should reflect local circumstances”

“Q.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?”

It is proposed to respond as follows –

“A.21 It is not accepted that an employees code of conduct is necessary. Neither is it accepted that a separate code is required for qualifying employees.”

PARISH COUNCILS

27. **Q22 – Should the employees’ code extend to employees of parish councils?**

“A22. As the Standards Committee doubts the need for a Code for employees at all the answer is no. However, if there is to be a national Code then logically it should extend to Parish Clerks. Although these Officers are relatively lowly paid they often have substantially more influence with their Councils than the majority of the Officers of Principal Authorities who would be covered by any new Code.

IMPLICATIONS OF REPORT

28. This report has implications in the following areas and the relevant Corporate Directors’ comments are included:

Finance		Customer Services	X
Human Resources		Equality and Diversity	
Legal	X	No significant implications in this area	

Background Papers

The Consultation paper Communities in Control: Real People, Real Power, Codes of Conduct for Local Authority Members and Employees.

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