

STANDARDS COMMITTEE

Friday 10th June 2005

PRESENT: The Chair (John Lay), John Batey (Parish Council representative), Judith Harley (Oxford City Conservative Party representative), County Councillor Smith (Labour Group representative).

OFFICERS PRESENT: Tim Revell (Interim Legal and Democratic Services Business Manager), Lindsay Cane (Monitoring Officer) and William Reed (Democratic Services Manager).

1. ELECTION OF CHAIR FOR THE COUNCIL YEAR 2005/06

John Lay was elected Chair for the Council Year 2005/06.

2. ELECTION OF VICE CHAIR FOR THE COUNCIL YEAR 2005/06

Diana Woodhouse was elected Vice-Chair for the Council Year 2005/06.

3. APOLOGIES FOR ABSENCE

Apologies for absence were received from Councillors Murray and Sellwood and from Chris Turner and Diana Woodhouse (both independent members).

4. MEMBERSHIP OF THE COMMITTEE

Resolved to note the contents of the note (previously circulated and now appended) setting out the Committee's membership.

5. DECLARATIONS OF INTEREST

Resolved to note the contents of the note (previously circulated and now appended) setting out guidance on declarations of interest. There were no declarations of interest.

6. POWERS AND DUTIES OF THE COMMITTEE

The Democratic Services Manager submitted a note (previously circulated and now appended) of the Committee's powers and duties. He explained that the note did not contain a reference for any role for the Committee on corporate complaints because, although the Committee had had complaints reports on its agenda in the past, complaints were not included in the powers and duties for the Committee as set out in the Councils Constitution.

Resolved:-

- (1) to receive the details of the Committee's powers and duties;
- (2) to record that the Committee considered it should have an overseeing role on corporate complaints and to ask that, in the context of the Council's review of the Constitution or otherwise, a role in relation to complaints should be included in the Committee's powers and duties.

6. URGENT BUSINESS

There was no urgent business.

7. MINUTES

- (1) Resolved that the minutes (previously circulated) of the meeting of the Committee held on 15th November 2004 be confirmed as a correct record.
- (2) Arising from item 3 of minute 7 (that dealt with Standards Board Bulletins), to ask the Democratic Services Manager to ascertain what Bulletins were currently produced by the Standards Board and to ensure that the Committee members received copies of them.
- (3) With reference to minutes 10 and 11 (that dealt with the Committee's views on two consultation papers issued by the Office of the Deputy Prime Minister), the Democratic Services Manager reported that the ODPM had advised that it was currently considering the responses that had been received. A summary of the responses would be published together with the Government's proposals on the next steps.

Resolved to note the position.

8. MEMBERS' CODE OF CONDUCT – REVIEW

The Monitoring Officer submitted the following papers (all previously circulated and now appended):-

- (a) Members' Code of Conduct as adopted by the Council on 11th February 2002;
- (b) Consultation review document issued by the Standards Board for England;
- (c) Report of himself upon the review.

Resolved that comments be made by the Committee on behalf of the Council as now set out in the letter to the Standards Board for England that formed the annex to these minutes.

9. MEMBER TRAINING

The Legal and Democratic Services Business Manager suggested that there were two aspects to training for members. One related to training generally for members on the ethical framework (the Code of Conduct requirements). The other related to dealing with investigations (i.e. cases referred to the Council for investigation by the Standards Board for England).

Resolved:-

- (1) to agree that training on the two aspects referred to by the Legal and Democratic Services Business Manager was important and that the general training should be offered more widely than the specific investigation training;
- (2) to ask the Monitoring Officer to report back to the Committee upon a programme of training.

10. CONSTITUTION REVIEW

The Monitoring Officer reported that the scope of the next phase of the Constitution review was currently being considered. He said that the Committee was responsible for three parts of the Constitution, namely the Members' Code of Conduct, the Whistleblowing Policy and the Protocol on Member/Officer Relations. He circulated (now appended) the Policy and the Protocol.

Judith Harley said, in relation to corporate complaints, that if the Committee was to be responsible for this, the process and publicity for the complaints procedure needed to be reviewed.

Resolved:-

- (1) to note that the Whistleblowing Policy was an internal confidential reporting code for staff and the Council's service delivery contractors/partners and that members of the public had other means

open to them to complain (i.e. to the Standards Board for England, to the Ombudsman and through the corporate complaints procedure);

- (2) (a) that the Policy and the Protocol be sent to Party Groups, with suggestions for changes, and updated in the light of comments upon the review of the Members' Code of Conduct, for their observations;
 - (b) that the review of the Policy and the Protocol be drawn to the attention of staff through the internal monthly Teambrief newsletter and staff be invited to comment;
- (3) that a report back upon the outcome of the exercises be made to the next meeting of the Committee.

11. STANDARDS BOARD FOR ENGLAND – CONFERENCE 2005

The Monitoring Officer submitted an advance programme (previously circulated and now appended) for the Standards Board for England 2005 conference.

Resolved to ask the Democratic Services Manager to ask Chris Turner and Diana Woodhouse if either of them would like and/ or were able to attend the Conference.

12. DATES OF FUTURE MEETING

Resolved to note that the Committee would meet, if there was business to warrant a meeting, at 10.30 a.m. on the following dates in the current Council Year:-

Friday 21st September 2005
Friday 6th January 2006
Friday 28th April 2006

The meeting commenced at 10.30 am and closed at 12.50 pm.

Ms Emma Ramano
The Standards Board for England
The First Floor
Cottons Centre
Cottons Lane
London
SE1 2QG

07 September 2005
Our ref: WR/RD/703/31
Your ref:

Dear Ms Ramano

Members' Code of Conduct – Review – Consultation

I refer to the Standards Board for England's review of the Members' Code of Conduct. We have taken a report upon the review to our Standards Committee. The Committee has commented and I set out its comments in the remainder of this letter. The report that we put before the Committee is appended to the letter.

I have copied this letter to all Members of the City Council and have circulated it to my opposite numbers at the other Oxfordshire District Councils and at the County Council.

The 29 questions that are contained in the consultation review, in order to focus consultees' minds, are usefully grouped into ten sections. Our comments are on a section-by-section basis. However, we have general comments, which I set out below as a pre-amble.

First, by way of a general comment, the view was expressed that the Code lacked simplicity. Whilst it is written in reasonably simple terms, it is not easy of interpretation. The Code review should seek to address this concern.

Second, by way of a general comment, the ethical framework that the Code represents appears disproportionate in the way it bears upon local government as compared with the ethical frameworks within which other parts of the public sector operate. The standard of conduct of Councillors is not so unethical in our view as to warrant a disproportionate approach.

Third, by way of a general comment, the existence of the Standards Board for England, investigating complaints centrally (although some complaints are now sent back to local authorities) is different to the approach advocated in the Third Report of the Committee on Standards in Public Life in that that Report advocated local self-regulation. We would favour this latter approach for various reasons but in part because it encourages local ownership and a pro-active approach to ethical issues.

Our detailed comments on the sections into which the Constitution review is grouped now follow.

The General Principles (Questions 1 and 2)

We feel that the principles of conduct in public life should and could usefully be incorporated into the Code as a preamble. This would help to put the Code into context. Our slight concern is that inclusion of the principles should not result in difficulties in interpreting the Code. Therefore, it might be sensible for the preamble also to explain that the principles are not part of the Code proper and failure to adhere to them would not of itself represent an investigatable apparent breach of the Code.

As to the principles, we feel that there should be a specific reference in the principle concerning Respect for Others to "courtesy" (in dealing on a Councillor to Councillor basis, between Councillors and Officers and between Councillors and the public).

Disrespect and Freedom of Speech (Questions 3 and 4)

Neither "respect" nor "disrespect" are defined in the Code. Whilst what is acceptable and what is not acceptable is tending to emerge through case reports, these issues (of necessity) rely on an element of subjectivity in assessing whether the Code has been breached under Article 2(b). We do not think there should be either a broad test for disrespect or a defined statement (because all cases are different) but some guidance and examples of a non-prescriptive nature would be useful.

We feel that the Code should contain a specific provision on bullying. Given that bullying investigations have been carried out and that the Board has had to rely on non-specific parts of the Code to deal with the subject, a specific provision can only be helpful.

Confidential Information (Questions 5 and 6)

We do not consider that there should be specific public interest defence in the Code but we do believe that in investigations under this part of the Code, disclosure in the public interest might reasonably be considered as an argument in mitigation. An explicit public interest defence would we feel make the conduct of local government unworkable if members were able to disclose confidential information by arguing that they thought it was in the public interest to do so.

The definition of the word "confidential" needs to be addressed because it is too loose and imprecise at present. On the one hand, "confidential" in the loose sense would cover information that in law must remain confidential and information that a local authority may by resolution decide to take without the press and public being present (i.e. exempt information). But if in the latter category the local authority has wrongly decided that information is exempt (i.e. for example it is not taken into proper account the presumption of openness under Freedom of Information rules) then it could not be released in the public interest under the Code. On the other hand, to limit "confidential" to information that is lawfully confidential or exempt would cause problems. For example, a member might be given private and highly personal information about a person on an informal basis, outside any Committee or other formal reporting mechanisms, where the member might reasonably be expected to respect the confidentiality of the information. If no part of the Code governs such situations, it would make the informal consultation processes difficult to operate.

In summary therefore, we believe that Article 3(a) needs to be recast inasmuch as the interpretation of the word "confidential" is concerned. A reference, by way of guidance or otherwise, to seeking Monitoring Officer assistance might help.

Disrepute and Private Conduct (Questions 7 and 8)

We are broadly happy with the Code in this respect. However, on interpretation, there will be instances where it is unclear in which capacity a member is acting and the link between private and public life may be arguable on the facts. In addition, public perception will vary depending (perhaps) upon the member, the public and the accepted behaviour in the local authority's area (e.g. what might be acceptable in Rochdale may not be acceptable in Richmond, and vice versa).

Misuse of Resources (Question 9, 10 and 11)

We would not be opposed to a change to Article 5(b)(ii) as proposed but equally we would be content for that Article to remain unchanged. We feel that the generic term "resources" is all embracing.

Duty to Report Breaches (Questions 12 – 15)

We had some considerable discussion on this section. We concluded that it should be incumbent upon members to seek advice of the Monitoring Officer before taking action under Article 7. Subject to this, the Committee felt that the requirement in Article 7 might be narrowed so as to apply only to "serious" misconduct or "material" breaches of the code, so as to exclude trivial or frivolous allegations. The duty could also be narrowed to breaches arising only when acting as a Councillor (i.e. excluding a members private life).

The Committee felt that complainants are already protected insofar as intimidation of a complainant would be likely to be a breach of the Code or of other laws on intimidation.

The Committee reached no view on whether there should be a provision in the Code relating to false, malicious or politically motivated allegations. However, the Committee did decide that our own local guidance needed to be added to by a way of references to making false complaints; to the content of political newsletters; and to the balance between freedom of speech and false, malicious or politically motivated allegations.

Personal Interests (Questions 16 – 21)

We agree that guidance is needed on the term "friend". We made this observation in our comments on the ODPM consultation on a Model Code of Conduct for Local Government Employees.

We consider that the term "well being" should be tightened up and do not accept the seemingly relaxed approach to the definition in paragraph 5.1.4 of the Code review even though it has been endorsed by the High Court. The definition is so wide as to cover almost any situation. Whilst we accept that the term is not one for definition in the Code itself, guidance by way of narrowing and making the definition more substantial is needed.

We do not feel it would aid clarity to introduce a new category of interest (question 18 refers).

We do consider that the personal interest test should be narrowed (by way of clarification) as referred to in question 17.

The Committee did not address itself to question 21.

As a result of considering this section, we intend to adapt our own local guidance, particularly on planning interests.

Prejudicial Interests (Questions 22 and 23)

Our answer to both questions is “no”.

Registration of Interests (Questions 24 and 25)

On the nature of the member's employment, whilst we have some sympathy with what a change to the Code might be attempting to achieve, we do feel that there should be guidance on how the discretion to register sensitive information might be exercised.

We had some considerable discussion on membership of clubs and organisations. We feel that greater clarity on the nature and scope of registerable memberships is needed. But we do not consider that registration should be confined to those clubs and organisations in or near the local authority's area. There may be some, perhaps many national clubs and organisations, the membership of which may not fall within Article 5(d) but which nevertheless do seek to influence public opinion. The National Trust may be one such example. The Campaign for Real Ale may be another.

Gifts and Hospitality (Questions 26 – 29)

The Committee did not specifically address question 26.

On question 27, we felt that there should be no requirement to declare gifts and hospitality declined. We felt that the current threshold for declarations was appropriate. We felt that a series of gifts should be declared.

Yours sincerely

Contact: **William Reed**
Democratic Services
Manager