

**Title of Report :** MEMBERS' CODE OF CONDUCT - REVIEW

**Report of:** Monitoring Officer

**To:** Standards Committee

**Date:** Friday 6th January 2006 **Item No: 6**

**Purpose of report:** This report sets out the recommendations of the Standards Board for England to the Government on the recent review of the Members' Code of Conduct. It compares the recommendations with the comments made by this Committee upon the review.

**Recommendation(s):** The Standards Committee is recommended to note the contents of this report.

**Key decision:** No

**Portfolio Holder:** N/A

**Scrutiny responsibility:** N/A

**Ward(s) affected:** All

**Report Approved by:** Jeremy Thomas, Head of Legal and Democratic Services

**Policy Framework:**

1. The Committee commented upon the review of the Members' Code of Conduct at its meeting on 10th June 2005 (minute 9 refers). The Standards Board for England (SBE) has considered all of the comments received and has submitted its recommendations to the Government. The SBE summary recommendations are appended to this report as Annex 1. A more detailed paper on the SBE's conclusions are appended to this report as Annex 2.
2. Ministers are currently considering the recommendations of the SBE and the Office of the Deputy Prime Minister is expected to pronounce upon them shortly. (*Note: Since this report was prepared the ODPM has issued a Discussion Paper on the future conduct regime for local government in England. A report on the Paper forms agenda item 9.*)
3. As to the Council's comments, they are summarised below in italics followed by commentary upon the extent to which those comments are incorporated into

the SBE's recommendations. Against each item below there is either a ✓ (where the SBE's recommendations accord with our own comments), a X (where the recommendations do not accord with our own comments) and a ? (where it is unclear if the SBE holds the same view as the Council, or where the Council's comments have not been considered).

- (i) ? *The Code should be easier of interpretation.*

This is perhaps implicit in the recommendations. The Board considers that the Code should not contain a list of prohibitions but, rather, that it should promote effective local governance and should thus be positive in its approach. The Board is also saying that it is committed to working in partnership with national bodies to ensure there is clear and unambiguous guidance to help Councillors do their jobs more effectively whilst maintaining the standards the public has a right to expect.

- (ii) ? *The Code is disproportionate in the way it bears upon local government.*

The changed emphasis of the Code that it is being recommended to Government will perhaps address this.

- (iii) X *There should be local self-regulation of complaints as proposed by the Third Report of the Committee on Standards in Public Life.*

This observation was not specifically addressed in the analysis of the comments received that was carried out by the Board's consultants. However, some complaints are now sent back to local authorities.

- (iv) ✓ *The Principles of Conduct of Public Life (namely Selflessness, Honesty and Integrity; Objectivity; Accountability; Openness; Personal Judgment; Respect for Others; Duty to Uphold the Law; Stewardship; and Leadership) should be incorporated into the Code as a preamble.*

It appears that this is what is being recommended.

- (v) X *Include "courtesy" as an additional principle.*

This has not been accepted. Neither have the 17 other suggested additions, each offered by one respondent.

- (vi) ✓ *There is a general presumption in the Code to treat others with respect. We felt there should be neither a broad test nor a defined statement for what constitutes "respect" or "disrespect". We felt that*

*some guidance and examples of a non-prescriptive nature would be useful.*

The Board agrees that “respect” and “disrespect” should not be defined.

- (vii) ✓ *The Code should contain a specific provision on bullying.*

The Board is recommending that this be addressed more explicitly in the Code.

- (viii) ✗ *At present the code says that a member must not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature. We felt that there should not be a specific public interest defence in the Code in relation to disclosure of confidential information. However, we felt that disclosure in the public interest might reasonably be considered as an argument in mitigation.*

The Board considers the Government should review the local government access to information provisions in the light of the Freedom of Information Act and in view of the Board’s opinion that local government continues to treat too much information as “confidential”. The Board is recommending that the Code should allow members to disclose confidential information where it can be demonstrated that such disclosure is in the public interest.

- (ix) ✓ *We expressed ourselves not unhappy with the existing Code as to its provisions on disrepute and private conduct. The Code says “a member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute”.*

The Board’s stance appears to be the same as that of the Council, namely that private behaviour should only be regulated when it seriously damages the reputation of local government (by way primarily of unlawfulness).

- (x) ✓ *We did not consider that the misuse of resources provision of the Code needed to be changed but said that we would not be unhappy if it was changed.*

The Board is asking the Government to consider how the Code might be clarified to better control the misuse of resources for party political advantage. Local protocols on misuse should be developed and relied upon.

- (xi) ✓ *We felt it should be incumbent upon members to seek advice of the Monitoring Officer before deciding whether to make a written allegation concerning a breach of the Code to the Standards Board as the Code requires.*

The Board accepts that this provision has resulted in trivial, frivolous and vexatious allegations being made. The Board is recommending that the provisions should be deleted from the Code. The Board is asking the Government to consider the inclusion of a provision prohibiting intimidation of a complainant or witnesses.

The attention of the Committee is drawn to the commentary in a more detailed paper that forms Annex 2 to this report.

- (xii) ✓ *We do not feel that provisions of the Code as to the declaration of gifts and hospitality needed to be changed.*

The Board agreed.

- (xiii) ✓ *We felt there should be greater clarity and guidance on registrations of interests.*

The Board's consultants concluded, upon analysis of the replies to the consultation, that:-

- There is support for the proposition that areas of sensitive employment needed only to be declared in a private register rather than one for public consumption.
- There is support for the proposition that members should be required to register membership of private clubs and organisations, although the Standards Board would need to assess the potential significance of these responses.

- (xiv) ✗ *An extract from the Code on personal and prejudicial interests is attached to this report as Annex 3. We felt that:-*

- *Guidance was needed on the term "friend".*
- *The term "well being" should be tightened up.*
- *A new category of "public service interest" should not be created.*
- *The personal interest test should not be narrowed so that members did not have to declare interests shared by a substantial number of other people in the authority's area.*

- *Members with a prejudicial interest should not be allowed to address a meeting or contribute to a debate before withdrawing from the meeting room.*

The Board is recommending the Government that:-

- There should be a public service interest category, declarable when a member speaks on a related subject unless the interest is prejudicial. When the interest is prejudicial the member should be invited to address the meeting and answer questions before withdrawing from the meeting room.
  - Members should not have to declare an interest shared by a substantial number of other people in the authority's area.
  - There should be broader powers to grant exemptions to members with a prejudicial interest. This power is exercisable by this Committee at present.
4. The Committee is being asked to note the contents of this report. As soon as the office of the Deputy Prime Minister has pronounced upon the Review, I will report further. *(Now see the report at agenda item 9.)*

**Name and contact details of author:-**

William Reed  
Democratic Services Manager  
Town Hall Oxford OX1 4YS  
Tel: 01865 252230 e-mail: [wreed@oxford.gov.uk](mailto:wreed@oxford.gov.uk)

**Background papers:** None.

## Cracking the Code

Over 1,200 individuals, groups and whole authorities responded to our consultation on the review of the Code of Conduct and we spoke to almost a thousand people at 11 roadshows across the country, from Newcastle to Plymouth. We presented our conclusions to the local government minister at our Annual Assembly in September.

We agree with the local government community when it says it wants a Code it can own and work with. And we know it wants the Standards Board for England to take on an ever more strategic role supporting authorities in developing a local approach to building public confidence in local democracy.

### Recommendations

These are the key changes we want to see made:

- > The Code of Conduct should be simpler, more enabling, and owned by the members it applies to.
- > The Code needs to empower members as community advocates, taking the lead on issues where their expertise is greatest and speaking out on behalf of their communities.
- > The rules around personal and prejudicial interests should be clearer, especially for members who sit on more than one public body.
- > Members must be able to disclose information when it is in the public interest. The Code needs to be clear on what information should be confidential.
- > Members are entitled to private lives. The public only expects private behaviour to be regulated when it seriously damages the reputation of local government.
- > Members have a right to challenge poor performance and criticise officers fairly, but bullying cannot be tolerated and needs to be addressed more explicitly in the Code.
- > The current duty for members to report breaches is unnecessary and unhelpful, and should be removed.
- > The Code should protect complainants and witnesses from intimidation.

The full recommendations are available from our website at [www.standardsboard.co.uk/codereview/](http://www.standardsboard.co.uk/codereview/).

### A shift in focus

We have urged the Government to respond to our review of the Code of Conduct as soon as possible. In the meantime, we will continue to shift our focus, investigating only those cases with the greatest potential to damage public confidence in local democracy and supporting relevant authorities in taking responsibility for improving ethical standards.

## **The Standards Board for England's consultation on the review of the Code of Conduct**

### **Recommendations to Ministers**

At last year's Annual Assembly of Standards Committees, the then Minister, the Rt Hon Nick Raynsford MP, invited the Standards Board for England to carry out a review of the Code of Conduct in the light of its three years' experience working with the Code. The Minister said that, whilst the fundamental principles which underpinned the Code should be maintained, the Board should see whether there were areas where the Code could be made clearer or more effective.

*The Board launched its consultation in February 2005 and consultation closed formally on 17 June. Over 1200 responses were received and an independent analysis of those responses was carried out on the Board's behalf by researchers from the University of Teesside.*

This report sums up the Board's conclusions on how the Code should be amended based on its own experience and the consultation responses. The Board's overriding aim was to consider how provisions could be simplified, clarified or liberalised while remaining true to the underlying principles of the Code.

### **General conclusions**

- **The Code should be clearer, simpler and more positive.**
- **How it is enforced, nationally and locally, is as important as its content.**
- **The ten general principles set out in the Relevant Authorities (General Principles) Order 2001 should be included as a standard to be attained.**

The Government should seek ways to simplify the Code wherever possible, clarify the rules around declarations of interests, and ensure the Code is seen in a more positive light as something which promotes effective local governance in a modern setting, rather than merely being a list of prohibitions of certain types of activity. In particular, the Board recommends that the Government should have the ten general principles on the face of the Code to remind members of the positive values they should be promoting. We believe the Code should, where possible, be written as a positive rather than negative statement. And we believe a better balance needs to be struck between the proper need to protect public decision-making from inappropriate influence, recognition of the key role members play as democratically-elected advocates on behalf of their communities, and the public expectation that members should be allowed to speak up when decisions are being taken which will have a wide impact on the community. This means that the rules governing prejudicial interests need to be reconsidered.

A key theme of the consultation was the need for a consistent application of the rules across the country, and for clear advice so that all members can understand the lines which they should not cross. Simplification of the Code will help to achieve some of this but the Board is committed to working in partnership with national bodies to ensure there is clear and unambiguous guidance to help councillors do their jobs more effectively while maintaining the standards the public has a right to expect.

The key provisions of the Code with which consultees were most dissatisfied were the provisions relating to the declarations of interests and these must be seen as a priority for the Government. The following section outline the Board's clear view on

how the provisions could be improved to strike a better balance between protection of decision-making and the vital role of councillors as democratically-elected advocates on behalf of their communities.

### **Personal and prejudicial interests**

- **There should be greater support for the councillor's role as an advocate for their community.**
- **There should be a reduction in the number of personal interests which need to be declared.**
- **There should be greater local discretion to grant dispensations.**

The Board believes the fundamental principle underpinning the need to declare interests, and in certain cases withdraw from the decision-making process, is a sound one if the public is to continue to have confidence that decisions are taken in the public interest rather than for personal gain and are seen to be done so.

However, there is a concern that the current rules are overly-restrictive (either in reality or in the way they are interpreted locally) and exclude members from discussing certain matters which their communities would expect them to be addressing or even, in certain cases, which they have been elected specifically to address. Given the changing role of most councillors, the Code needs to be seen to be supporting such local advocacy and the democratic right of a community to be represented when key matters which affect that community are under discussion.

In addition, there is a concern that too much time is spent at the start of a meeting declaring a wide range of personal interests which arise solely from the public role of the individual concerned.

The Board believes the following improvements should be made:

- a) The definition of a personal interest should be restricted so that members do not have to declare an interest where it is merely something that affects them no more than a wide community.
- b) Interests which arise solely because a member serves on another public body should be treated differently from interests which arise from a member's private life. Such public service interests should only be required to be declared when a member speaks on a related subject, unless the interest is also prejudicial. It would only be prejudicial if it related directly to the public body (for example, a grant application on its behalf) or was a regulatory decision which directly affected that body or its aims. In such cases, the member should be invited to address the meeting and answer questions on behalf of the body but then withdraw before the substantive discussion so that they are not seen to be influencing the debate.
- c) Prejudicial interests where the member is advocating on behalf of an outside body, such as a charity or local pressure group, should be treated in the way outlined in b) above.
- d) The Government should also give local authorities broader powers to grant exemptions to members with prejudicial interests who nevertheless are speaking on behalf of their constituents.



## **Register of interests and register of gifts and hospitality**

- **The types of interests which need registering should remain unchanged.**

The Board believes that no major changes are needed in this area although it should be made clear that the register of gifts should be publicly available in the same way as the register of interests, and some of the exact wording of the provisions of the register of interests should be re-examined so it is clear to members what interests the Government intends should be registered.

In addition to these important provisions around registration and declaration, the Board has concluded the following points as ways in which the important provisions relating to personal behaviour can be clarified and simplified while remaining true to the Code's underlying principles.

## **Disrespect**

**There should be a specific provision on bullying.**

The Code should continue to address disrespect. No definition is needed as each case must be considered on its merits. However, the Board's view is that there should be an additional provision in the Code which makes it clear that bullying behaviour, in particular, should not be tolerated. The Board's experience has taught it that, in a small number of cases, there is a culture of bullying of fellow members, of officers and of the public, and a specific provision in the Code would be a strong signal of disapproval of such behaviour. Whilst legitimate challenges of poor performance will always be necessary, some of the behaviour seen by the Board has been unacceptable and the Board would welcome the Government's recognition that such behaviour has no place in modern local government.

## **Disclosure of confidential information**

- **Members should be able to disclose information in the public interest.**
- **The Government needs to consider the impact of the Freedom of Information Act on confidentiality.**

The Code should be explicit in allowing members to disclose confidential information where it can be demonstrated that such disclosure is in the public interest. The Board does not wish the situation to arise where a member could technically fall foul of the Code by disclosing information which the authority has decided was confidential when such information would have been accessible under freedom of information provisions. The board believes some in local government continue to treat too much information as confidential and, given the Government's commitment to freedom of information, consideration needs to be given both to how the Code can address this situation and whether the local government access to information provisions need to be revisited.

## **Disrepute**

**Certain behaviour outside of official duties should continue to be regulated but it should be limited to unlawful activities.**

The Board believes that the Code should continue to cover certain aspects of conduct which do not relate directly to official duties. The Board recognises the views expressed by some that only matters relating to council business should be regulated. However, some of the private activity that the Board has considered does have the potential to bring a member's authority or office into disrepute so the Board believes that this provision should continue to have some wider application, bearing in mind also that one of the ten general principles is a duty to uphold the law. However, the Board believes the provision could be clarified to demonstrate that it is only unlawful activity committed outside of official duties which should be regulated and not activities of which certain individuals may merely disapprove.

## **Misuse of resources**

- **Local protocols should be enforced locally where appropriate.**
- **Serious misuse of resources, particularly for political benefit, should be regulated nationally.**

Many authorities have effective local protocols governing the use of council resources. All authorities should be encouraged to adopt effective protocols, enforcement of which should broadly be left to the local level, with the Board only becoming involved where there has been alleged serious misuse of public resources. In addition, consultation clearly showed that the main concern was about misuse of public resources for party-political advantage. The Government should therefore consider how to clarify the Code's provisions to better control such abuse, and how it should relate to the existing publicity code for local authorities.

## **Duty to report breaches**

- **The duty to report breaches should be abolished.**
- **There should be protection against intimidation where people do complain.**
- **All involved in the process, including members themselves, need to take greater steps nationally and locally to discourage vexatious complaints.**

The provision of the Code which requires members to report breaches to the Board has been unpopular. The Board believes it had two underlying purposes – to prevent members from turning a blind eye to serious misconduct by their colleagues and to protect members who wished to come forward and report fellow members in spite of pressure to do otherwise. The Board does not believe the present provision achieves either of these aims satisfactorily, and instead has led to members using the provision as a pretext for making trivial allegations to cause mischief.

The Board considered whether the provision should be retained but limited only to allegations of serious misconduct. Whilst this was the most popular option in consultation, on reflection the Board thinks any attempt to draft such a provision would lead to subjective views on what was or was not serious. This would lead to arguments about what should and should not have been reported and would be

unlikely to address the concern about trivial allegations. On balance, therefore, the Board believes this provision can be deleted.

However, the two underlying concerns the original provision sought to address need to be dealt with. Whilst the Board believes the vast majority of members would not turn a blind eye to serious misconduct, it believes that for those handful of cases where there does appear to be a serious conspiracy, existing powers in the Code can be used to deal with the issue. The Board is also concerned that members who do report serious misconduct should be protected from victimisation in the same way that employees are protected by law. One way of doing this would be to have a provision prohibiting intimidation of a complainant or witness and the Government should consider such an option.

In addition, the Board is committed to work with the Government to find further ways of reducing politically-motivated complaints. The Board is particularly concerned about examples it sees of allegations being reported in the local press, often before they have even been sent to the Board. Such activity damages the reputation of local government as a whole, and all concerned need to find better solutions to prevent such mischief. This may be outside the scope of the Code review, but we wish to explore options with Government, representative bodies and local authorities as to how the ethical framework can be used more sensibly to the benefit of all.