

**Title of Report :** STANDARDS OF CONDUCT IN ENGLISH LOCAL GOVERNMENT: THE FUTURE

**Report of:** Monitoring Officer

**To:** Standards Committee

**Date:** 6<sup>th</sup> January 2006

**Item No:** 9

**Purpose of report:** This report concerns the Government's intentions in respect of the future conduct regime for local government in England. These intentions are contained in its Discussion Paper issued on 15<sup>th</sup> December 2005 entitled "Standards of Conduct in English Local Government: The Future". The Discussion Paper responds to the Standards Board for England's review of the Members' Code of Conduct and to other consultations and representations.

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

**Key decision:** N/A

**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:**

## INTRODUCTION

1. On 15<sup>th</sup> December 2005 the Government, through the Office of the Deputy Prime Minister, issued a Discussion Paper entitled "Standards of Conduct in English Local Government: The Future". The Discussion Paper represents the Government's response to the review of the Members' Code of Conduct and also to the following:-
  - The ODPM Select Committee report on the role and effectiveness of the Standards Board for England.

- The recommendations in Chapter 3 of the Tenth Report of the Graham Committee on Standards in Public Life "Getting the Balance Right – Implementing Standards of Conduct in Public Life".
  - The consultation paper entitled "A Review of the Regulatory Framework concerning the Political Activities of Local Government Employees".
  - The consultation paper entitled "A Model Code of Conduct for Local Government Employees".
2. This Committee has commented on the review of the Members' Code of Conduct (minute 9, 10<sup>th</sup> June 2005); on the paper on political activities of local government employees (minute 11, 15<sup>th</sup> November 2004); and on the paper on a Model Code of Conduct for Local Government Employees (minute 10, 15<sup>th</sup> November 2004).
  3. This report to the Committee summarises the December 2005 Discussion Paper. The report is in three parts, the first on the Government's response to the Member's Code of Conduct and the other two parts on the political activities of local government employees and on the Code of Conduct for Local Government Employees.

## **SUMMARY**

4. In summary the Government's response to the five papers referred to in paragraph 1. above recognises the strong track record of high standards of conduct in local government. Nevertheless the response recognises the continuing need:-
  - To maintain high standards of conduct for local authority members and employees.
  - To define effectively what standards of conduct are expected of members and officers, and for such rules to be fair and clear.
  - For an effective means of taking action when breaches of the rules occur, and for such means to be fair, clear, proportionate, rigorous and thorough.
  - To ensure measures are in place the guarantee public confidence in the appropriateness of the ethical regime.
5. The Government considers that the conduct regime should be very much more of a local one than it is at present. In other words Government considers that there should be local ownership and local decision-making of and on conduct issues. The Government considers that the role of the Standards Board for England should change so that

it has a more central and strategic role, and so that it investigates only the more serious conduct cases. Standards Committees and Monitoring Officers would investigate or otherwise deal with the vast majority of conduct cases. The Government considers that there should be a National Code of Conduct for local government employees, incorporated into employees' contracts of employment. The Government considers that the existing framework of restrictions on political activities of local government employees should be retained.

6. The changes advocated by the Government will need to be introduced by a combination of both primary and secondary legislation and it is the Government's intention to "seek this legislation at the next convenient opportunity that Parliamentary time allows".

## **CONDUCT REGIME**

### **General**

7. The Government agrees with the Standards Board for England's suggestions as to revisions to the Code that:-
  - Make the code clearer and simpler.
  - Maintain a rigorous approach to the identification of serious misconduct.
  - Amend the regime for declaring interests and speaking at council meetings, particularly for members who also serve on other public bodies.
  - Make changes to the arrangements for determining whether conduct in private life should fall within the ambit of the code.
  - Amend the rules on the reporting of allegations by members to reduce the number of vexatious complaints.

### **Standards Committees and Monitoring Officer**

8. The role of both Standards Committees and local authority Monitoring Officers are to be enhanced. They will be responsible for promoting and championing high standards and increasing councils' awareness of standards issues. Monitoring Officers will undertake the investigation of most allegations of breaches of the Code and Standards Committees would make determinations in most cases. Only the most serious cases (of national significance or that would set an important precedent) would go into the Standards Board for England for investigation.

This move towards a locally based regime would recognise local situations. It would potentially allow mediation on complaints before they turned into full-blown allegations. It ought to enable vexatious, frivolous, trivial, politically motivated and otherwise unworthy complaints to be spotted and either rejected or handled with regard to an understanding of local pressures and sensitivities.

9. The Government recognises that this greater role for Standards Committees and Monitoring Officers means that there will be a need for capacity building and support. The Government sees it as the role of the Standards Board for England to:-

- Define what people should expect the standards regime to deliver, including the roles expected of Monitoring Officers and Standards Committees.
- Ensure the effectiveness of the performance of Monitoring Officers and Standards Committees.

The Board will be asked to set a framework of training requirements, producing guidance material to trainers, setting minimum requirements for Monitoring Officers and Standards Committees and supporting self-assessment by local authorities.

The Government envisages Standards Committees reporting to the Board on how they have been undertaking their role. This might be done by requiring submission of an annual report. The Government envisages that the Standards Board for England would have the power to withdraw Standards Committee's powers if they were not operating in the public interest.

10. As to membership of Standards Committees, the Government is minded to require that the Chairs of Standards Committees should be independent members and that the Committees should include independent members "who reflect a balance of experience". The Board is not in favour of Standards Committees consisting of a majority of independent members. The Government considers that Standards Committees should "share their experiences and expertise" and possibly join forces in recruiting independent members or on the provision of Monitoring Officer services. There would be economies of scale in doing so. The Government is to work with the Standards Board for England to establish the most effective way to promote joint working including whether legislation should be promoted to require Standards Committees to co-operate, and to work together jointly.

### **Code of Conduct**

11. On the detail of the Code itself the Government is minded to accept virtually all of the Board's suggestions. Prime among these are the following:-

- (a) Inclusion of bullying in the Code as representing a breach of the Code.
- (b) Amendment of the Code in respect of interests where the public would expect Councillors to represent the views of their communities. In order to "get the balance right" the Code will exclude Councillors from taking decisions where they or their close associates gain an unfair advantage but allow Councillors to participate where they are acting in their representative or local advocacy role. So, under such a change, a member with a "public service interest" or otherwise would be permitted to speak at a committee and to answer questions and then to withdraw before the debate or vote took place. The requirement that members should not seek improperly to influence a decision will remain.
- (c) Removal of the duty to report potential misconduct.
- (d) Private conduct would be regulated only for unlawful activities.
- (e) There would be a public interest defence on release of confidential information.

### **POLITICAL ACTIVITIES OF LOCAL GOVERNMENT EMPLOYEES**

12. We commented upon the Government's consultation on this matter in 2004. We felt that:-
- Political restrictions based upon the nature of the job held was the most appropriate means of defining to which jobs political restrictions should apply. We felt that the current restriction mechanism based on salary was unrefined.
  - There should be a distinction between officers giving advice and officers providing factual information with the latter category of officer being exempt from political restriction.
  - That there was no merit in making changes to the independent adjudicator arrangements.
  - That employees should be required to resign from the Authority upon adoption as a political candidate.
13. The discussion paper indicates that the Government:-
- Is not minded significantly to change the way in which political restrictions apply.

- Appears to have been persuaded by responses that said that political restrictions based upon the nature of the job would be unduly onerous for local authorities to administer.
- Is minded to amend the rules so that political restrictions “only apply to the most senior or the most sensitive posts”. This does seem to imply some element of job categorisation and a removal of certain less highly paid posts from the scope of political restriction regime.
- Is minded to abolish the post of independent adjudicator and transfer the role in terms of reaching decisions on applications for exemption from political restrictions to Standards Committees locally.
- Is minded not to make any changes to the rules relating to employees acting as elected members.

### **CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES**

14. We commented upon the Government’s consultation on this matter in 2004. We made a number of detailed comments on the draft Code (appended, for information, to this report). We supported the introduction of an Officer Code.
15. The Government is minded to issue a Code of Conduct that local government employees should follow. The Government considers that the Code should be incorporated into each employees’ contract of employment. The Government will issue a Code based upon an amended Members’ Code. It has indicated that the Code will contain general principles only and that decisions on detailed interpretation will be left to local authorities.

Given that our comments on the consultation were detailed ones it seems to follow that we would favour a rather more detailed Officer Code than the Government appears minded to introduce.

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**Background papers: None**

## 6. Draft Model Code of Conduct for Local Authority Employees

### THE EMPLOYEES' CODE OF CONDUCT

#### *Honesty, Integrity, Impartiality and Objectivity*

1. An employee must perform his duties with honesty, integrity, impartiality and objectivity.

#### *Accountability*

2. An employee must be accountable to the authority for his actions.

#### *Respect for Others*

3. An employee must –
  - a) treat others with respect;
  - b) not discriminate unlawfully against any person; and
  - c) treat members and co-opted members of the authority professionally.

#### *Stewardship*

4. An employee must –
  - a) use any public funds entrusted to or handled by him in a responsible and lawful manner; and
  - b) not make personal use of property or facilities of the authority unless properly authorised to do so.

#### *Personal Interests*

5. An employee must not in his official or personal capacity –
  - a) allow his personal interests to conflict with the authority's requirements; or
  - b) use his position improperly to confer an advantage or disadvantage on any person.

#### *Registration of Interests*

6. An employee must comply with any requirements of the authority –
  - a) to register or declare interests; and
  - b) to declare hospitality, benefits or gifts received as a consequence of his employment.

*Reporting procedures*

7. An employee must not treat another employee of the authority less favourably than other employees by reason that that other employee has done, intends to do, or is suspected of doing anything under or by reference to any procedure the authority has for reporting misconduct.

*Openness*

8. An employee must –
- a) not disclose information given to him in confidence by anyone, or information acquired which he believes is of a confidential nature, without the consent of a person authorised to give it, or unless he is required by law to do so; and
  - b) not prevent another person from gaining access to information to which that person is entitled by law.

*Appointment of staff*

9. (1) An employee must not be involved in the appointment of any other decision relating to the discipline, promotion, pay or conditions of another employee, or prospective employee, who is a relative or friend.
- (2) In this paragraph –
- a) “relative” means a spouse, partner, parent, parent-in-law, son, daughter, step-son, step-daughter, child of a partner, brother, sister, grandparent, grandchild, uncle, aunt, nephew, niece, or the spouse or partner of any of the preceding persons; and
  - b) “partner” in sub-paragraph (a) above means a member of a couple who live together.

*Duty of trust*

10. An employee must at all times act in accordance with the trust that the public is entitled to place in him.