

**Title of Report :** CODES OF CONDUCT FOR LOCAL AUTHORITY  
MEMBERS AND EMPLOYEES

**Report of :** Head of Legal and Democratic Services

**To :** Standards Committee

**Date :** 5<sup>th</sup> December 2008

**Item No**

### Summary

**Purpose of report :** To respond to Government consultation paper 'Codes of Conduct for Local Authority Members and Employees'.

**Recommendation(s) :** To respond to the Consultation Paper in the terms suggested in the report.

**Key decision :** No

**Portfolio Holder :** Not applicable

**Scrutiny Responsibility :** Not applicable

**Ward(s) affected :** Not applicable

**Report Approved by :** Jeremy Thomas (Legal)  
Finance

**Policy Framework :** Not applicable

## **Introduction**

The present Code of Conduct for members was made by statutory instrument in May 2007. In May 2008 the complaint regime changed so that all complaints are made locally to Standards Committees rather than nationally to the Standards Board for England ('SBE'). The Government, in the form of the Communities and Local Government Department, issued a Consultation Paper in October 2008 entitled "Communities in Control : Real People, Real Power.. Codes of Conduct for Local Authority Members and Employees". The complete document is attached as Appendix 1. The paper invites comments by the 24<sup>th</sup> December 2008.

## **Code of Conduct for Members**

**Consultation Question 1 : Do you agree that the Members' Code should apply to a member's conduct when acting in their non-official capacity?**

As the paper acknowledges it has always been the Government's intention that the Code should apply to a limited extent to the conduct of members in a non-official capacity. That intention was effectively thwarted by the High Court judgment in respect of the Ken Livingstone affair which, properly, held that the undertaking to comply with the Code under Section 52 of the Local Government Act 2000 was that "in performing his functions he will observe the authority's code of conduct." The words "in performing his functions" have now been omitted from Section 52 by virtue of Section 183(4) of the Local Government and Public Involvement in Health Act 2007 ('the 2007 Act').

The Government considers that certain behaviour, even where there is no direct link to the member's official role, can have an adverse effect on the level of public trust in local authority members and local government as a whole. I suggest that the Committee endorse that view insofar as the conduct constitutes a criminal offence. It is worth noting that a model Code could not go further than criminal offences in respect of private conduct in any event as that is precluded by Section 183(2) of the 2007 Act.

**Consultation Question 2 : Do you agree with this definition (set out below) of 'criminal offence' for the purpose of the Members' Code? If not, what other definition would you support, for instance should it include police cautions?**

The paper proposes that 'criminal offence' be defined as *any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.*

I suggest that the Committee agree with the proposed definition as it seems to strike a sensible balance.

The Committee will note that Section 80 of the Local Government Act 1972 disqualifies from office for five years any member who is convicted of an offence and receives a sentence of imprisonment (whether suspended or not) of 3 months or more without the option of a fine.

Consultation Question 3 : Do you agree with this definition (set out below) of 'official capacity' for the purpose of the member's code? If no, what other definition would you support?

It is proposed 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 you authority.*

This proposed definition is consistent with the wording at Paragraph 2(1) of the present model Code and I suggest that the proposal definition be supported.

Consultation Question 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?

The first element of the question relates to the commission of the offence and it is suggested that the requirement for the conduct to also be an offence in the UK be supported. The member is, after all, holding office in the UK. The second element that the conviction is in the country in which the offence took place is theoretically problematic in the sense that convictions may not always so arise but the requirement for a conviction per se merits support.

Consultation Question 5 : Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

Whilst this will undoubtedly be the normal and most appropriate course of action it is suggested that the Code should not absolutely preclude proceeding with the investigation or determination of a complaint in advance of conviction. There may be exceptional circumstances where not to proceed would seriously undermine the ethical framework within local government.

Consultation Question 6 : Do you think that these amendments (referred to below) to the Members' Code suggested in this part of the Consultation Paper are required? Are there any other drafting amendments which would be helpful?

The proposed change to make paragraph 12(2) mandatory rather than optional for Parish Councils is welcome and sensible. There was never a clear reason as to why it was optional in the first place.

The proposed clarification of paragraphs 8(1)(a)(i) and (ii) is noted but I have not been aware of any ambiguity or confusion which would suggest the need for clarification.

The other clarifications set out at paragraphs 2.27 to 2.30 are also welcomed. The Committee may wish to comment on whether the hospitality limit of £25 should be raised upwards given that it has remained at that level in the Code since 2001 and has therefore decreased in real terms. The Code could also, usefully, make clear that an Executive Member asked to give evidence to or generally assist a Scrutiny Committee does not have a prejudicial interest even when the Committee is scrutinising a decision made by that member, either individually or collectively as a member of the Executive Board or Cabinet.

Consultation Question 7 : Are there any aspects of conduct currently included in the Members' Code that are not required?

None are suggested.

Consultation Question 8 : Are there any aspects of conduct in a member's official capacity not specified in the Code that should be included?

The Code could usefully extend the definition of 'meetings' in paragraph 1(4) so as to include informal meetings between Members and Officers. The potential for undue influence is, arguably, greater at those meetings than meetings as presently defined.

In addition the requirement in Paragraph 7(1) to have regard to Officer advice is limited to the statutory reports of the Monitoring Officer and Chief Finance Officer. The Code could usefully oblige Members to have regard to any relevant advice provided by the authority's officers.

Consultation Question 9 : Does the proposal 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?

Yes.

Consultation Question 10 : Do you agree with the addition of the new general principle applied specifically to conduct in a member's non-official capacity?

It is proposed that a new principle be added which would be specified as applying to a member acting in a non-official capacity. The proposed principle being 'Duty to abide by the law – members should not engage in conduct which constitutes a criminal offence.'

The amendment is necessary to comply with requirement in Section 83 of the 2007 Act and is, on that basis, supported.

Consultation Questions 11 and 12 : Do you agree with the definitions of 'criminal offence' and 'official capacity' for the purpose of the General Principles Order?

If the Order is to be revised then the definition of 'criminal offence' has to be the same as that set out in the Code of Conduct. The proposal sets out different definitions. The definition of 'official capacity' is supported because it is consistent with the proposed definition for the Code.

**Code of Conduct for Local Government Employees**

The paper goes on to propose the introduction of a statutory Code of Conduct for employees. The Code would be incorporated into individual contracts of employment by operation of law and would be enforceable by the Council, as employer, via the normal disciplinary processes. These processes are well established and I recommend that the Committee should not seek to stray into those areas.

Consequently, I do not propose that the Committee should seek to comment on the model employee Code proposed. The Committee will note that the Council, as employer, will respond to those elements of the paper and I will also be seeking the views of the Unions via the Joint Consultative Committee which meets on the 18<sup>th</sup> December 2008.

**Recommendation**

That the Committee respond to the consultation paper in the terms suggested in this report.

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**Background papers: None**