

STANDARDS COMMITTEE

13 June 2005

'A CODE FOR THE FUTURE' – REVIEW OF THE CODE OF CONDUCT BY THE
STANDARDS BOARD FOR ENGLAND

REPORT OF CITY SECRETARY AND SOLICITOR

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RECENT REFERENCES:

None

EXECUTIVE SUMMARY:

The Standards Board for England is reviewing the Code of Conduct and all interested parties have been invited to comment by 17 June 2005. The Board will then publish its recommendations by the autumn and forward them to the Office of the Deputy Prime Minister for decision. It is hoped that any changes to the Code will be agreed by the end of the year.

RECOMMENDATION:

That, subject to any additional amendments agreed by the Committee, the proposed comments set out in this report be forwarded to the Standards Board for England as representing the views of the City Council on necessary changes to the Code of Conduct.

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DETAIL:

1 Introduction

1.1 The Code of Conduct was introduced three years ago and formally adopted by the City Council on 5 May 2002. The Standards Board for England (SB) is reviewing the Code of Conduct and all interested parties have been invited to comment by 17 June 2005. The SB will then publish its recommendations in the autumn and forward them to the Office of the Deputy Prime Minister for decision. It is hoped that any changes to the Code will be agreed by the end of the year.

1.2 A copy of the Code of Conduct is attached for ease of reference for Committee Members only.

2 Proposed Comments

2.1 Set out below for discussion are proposed comments in response to each of the 29 questions asked by the SB:-

The General Principles

Q1. Should the ten General Principles be incorporated as a preamble to the Code of Conduct?

A1 Yes, as a useful reminder. Also, by embodying the General Principles within the preamble to the Code, their status will be made clearer and their value reinforced.

Q2 Are there any other principles which should be included in the Code of Conduct?

A2 No.

Disrespect and freedom of speech

Q3 Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?

A3 The difficulty with having a more defined statement is that by being prescriptive, it is possible that certain unacceptable activities may still fall outside that definition. The current statement is clear and capable of being supported by periodic guidance from

the SB as required. The preferred approach, therefore, is to maintain the broad test, but to provide suitable, appropriate and authoritative guidance.

Q4 Should the Code of Conduct include a specific provision on bullying? If so, is the ACAS definition of bullying quoted in the full consultation paper appropriate for this?

A4 The City Council's Protocol on Member/Officer Relations already includes provisions relating to bullying, harassment, victimisation etc by Members. Whilst the point behind the question is appreciated, it is considered that such issues can be addressed satisfactorily under existing provisions and, as in A3 above, could be supported by specific guidance if required. In this and a number of other comments, the Council considers that all efforts should be made not to make the Code longer or more complex and to avoid duplication of existing provisions.

Confidential Information

Q5 Should the Code of Conduct contain an explicit public interest defence for members who believe they have acted in the public interest by disclosing confidential information?

A5 No. An explicit defence would run the risk of Members releasing confidential information and then later arguing that they had applied, albeit wrongly, the public interest test and decided that it was more in the public interest to disclose the information. The Code is currently clear about the confidential 'label' and a new provision as above would seriously undermine that understanding. If a Member believes that they are entitled to disclose such information, then they have the right to make a request under the Freedom of Information Act 2000.

Q6 Do you think the Code of Conduct should cover only information which is in law "exempt" or "confidential", to make it clear that it would not be a breach to disclose any information that an authority had withheld unlawfully?

A6 No. The difficulty with this provision is that it assumes that all information has been assessed in this way – this is not the case as the categories only apply to committee reports. For example, the categories do not cover draft papers circulating about a particular development or information given in confidence to a Member by an officer or constituent. Information which is protected from disclosure under the Data Protection Act and Freedom of Information Act should continue to be covered by the Code.

Disrepute and Private Conduct

Q7 Should the provision relating to disrepute be limited to activities undertaken in a member's official capacity or should it continue to apply to certain activities in a Member's private life?

A7 There is no doubt that Members conduct in their private lives can be relevant to their performance of public office. It is a matter of fact and degree as to how that linkage may become relevant in terms of the Code of Conduct (eg a dangerous driving offence committed by the Chairman of a Traffic Committee would almost certainly be

a breach, whereas the same offence by a Member with no transport responsibility may not be). Rather than amending the Code, SB guidance would be more helpful, perhaps based upon the 'reasonable member' test, which would provide some safeguards and protection under the Code to allegations of any breaches under the Human Rights Act and/or European Convention on Human Rights and Fundamental Freedoms.

Q8 If the latter, should it continue to be a broad provision or would you restrict it solely to criminal convictions and situations where criminal conduct has been acknowledged?

A8 Lawful private activities which some people may disapprove of for moral reasons should not come within the Code – the public can make their views clear about such activities at the next election. However, the Code should not cover just criminal convictions, but also cautions, ASBOs and other 'near criminal' situations such as regulatory infringements (eg flouting planning laws).

Misuse of Resources

Q9 We believe that the Code should prohibit breaches of the publicity code, breaches of any local protocols, and misuse of resources for inappropriate political purposes. Do you agree?

A9 Yes. In common with other councils, the City Council has an IT Security & Conduct Policy, plus the Protocol for Member/Officer Relations as mentioned above. These protocols provide guidance on a range of issues. Different authorities adopt slightly different approaches and it would be useful for the SB to issue a guidance document which established broad national parameters, allowing for a degree of local flexibility. This would be particularly useful in the case of misuse of resources.

Q10 If so, how could we define "inappropriate political purposes"?

A10 "Inappropriate political purposes" should cover any political activity which is not necessary for the undertaking of the decision-making functions of the Council.

For example, political groups are recognised by law as existing in the Council's decision-making structures. Support to the organisation of the group within the Council so as to aid decision-making processes is acceptable e.g. use of e-mail and meeting rooms for this purpose. Use of Council facilities involving members of the party outside the Council is not appropriate. Use of facilities for campaigning or electoral purposes is also unacceptable. However, explaining to a constituent about an action taken by a Councillor can be appropriate.

It is apparent that there are 'grey' areas which would be better covered by guidance rather than a narrow legal definition. At Winchester, the local protocols currently cover these issues.

Q11 Is the Code of Conduct right not to distinguish between physical and electronic resources?

A11 Yes, although particular emphasis should be placed on the misuse of IT, as that appears to be a major concern in some areas.

Duty to report breaches

Q12 Should the provision of the Code of Conduct that requires members to report breaches of the Code by fellow members be retained in full, removed altogether, or somehow narrowed?

A12 Whilst the concern of the SB to protect whistleblowers is appreciated, which is one suggested reason for the current provision, it has resulted in tit-for-tat allegations in some councils. A re-think of this provision is therefore required, so that the duty only applies to serious cases of malpractice.

Q13 If you believe the provision should be narrowed, how would you define it? For example, should it apply only to misconduct in a member's public capacity, or only to significant breaches of the Code?

A13 If the provision is narrowed, it should be limited to breaches that the 'reporting' Member reasonably believes are serious and significant matters occurring in public life – although the problem with interpreting these terms is acknowledged.

Q14 Should there be a further provision about making false, malicious or politically-motivated allegations?

A14 Yes. A suitable provision should help to deter such allegations and narrow the category of "serious" complaints covered under A13. To protect Members, the Code could contain a provision that any allegations found to be false etc could make the Member concerned in breach of the Code.

Q15 Does the Code of Conduct need to provide effective protection for complainants against intimidation, or do existing sections of the Code of Conduct and other current legislation already cover this area adequately?

A15 Existing sections of the Code deal with this adequately. Specific provision about intimidating complainants would only add more text to the Code unnecessarily.

Personal Interests

Q16 Do you think the term 'friend' requires further definition in the Code of Conduct?

A16 No – the guidance is sufficient.

Q17 Should the personal interest test be narrowed so that members do not have to declare interests shared by a substantial number of other inhabitants in an authority's area?

A17 Yes – the current test is too broad and requires clarification - a narrower test should be used.

Q18 Should a new category of "public service interests" be created, relating to service on other public bodies and which is subject to different rules of conduct?

A18 Yes – this is sensible and will avoid the need, for example, for Members who are also County or Parish Councillors to declare non prejudicial interests in matters in which the County or a Parish Council has expressed a view.

Q19 If so, do you think public service interests which are not prejudicial and which appear in the public register of interest should have to be declared at meetings?

A19 No – such interests already appear in the Register of Interests, which is open for public inspection.

Q20 Do you think paragraph 10 (2)(a-c), which provides limited exemption from the prejudicial interest rules for some members in certain circumstances, should be removed from the Code of Conduct?

A20 Yes. The provisions have not been understood in some quarters and a new public service interest, properly applied and recorded in the Register of Interests, will be an improvement. Where that public service interest is prejudicial, the Member should be able to participate in the debate, but leave the room before any vote is taken.

There ought, however, to be a clear prejudicial interest provision introduced into the Code of Conduct for Members, to the effect that a Member's appointment on an outside body by the Council will continue to have a prejudicial interest in any grant aid or other resource approvals required of the Council relating to that body and, as such, he/she must leave the room and not influence the Council decision relating to that outside body. Clearly, the consideration of a general update report on the finances of that outside body should not, normally, trigger a prejudicial interest.

Q21 Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups?

A21 Yes, provided those instances when a prejudicial interest may arise are clearly stated, either in the Code or additional guidance if likely to be lengthy. It is considered that the main areas where a prejudicial interest may arise are those where the matter has a direct impact on the organisation (eg grant aid) or where a regulatory decision is to be made (eg planning or licensing).

Prejudicial Interests

Q22 Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?

A22 No, provided a less stringent test is applied to what is prejudicial for a Member whose interest solely arises from membership of another public body, charity etc. (see A21 above). There is no suggestion here that a Member with a prejudicial interest arising from their private life should be allowed to participate.

Q23 Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?

A23 Only in the circumstances outlined above.

Registration of Interests

Q24 Should members employed in areas of sensitive employment such as the security services, need to declare their occupation in the public register of interests?

A24 Provided there was SB guidance as to what may be construed as 'sensitive' employment, it should be permissible for any Member in such employment to make the details known to the Monitoring Officer only, who could decide whether it was reasonable to exclude the entry from the Register of Interests.

Q25 Should members be required to register membership of private clubs and organisations? And if so, should it be limited to organisations within or near an authority's area?

A25 There has been confusion over this provision, not least about deciding whether relatively informal gatherings which have given themselves a name, constitute a 'club' within the intentions of the Code. It would improve the position if there was an explicit requirement to register membership of all clubs and organisations in the authority's area, plus guidance about how to treat the situation where it is a national body and the head office is elsewhere, but there is local activity.

Gifts and Hospitality

Q26 Should the Code of Conduct require that the register of gifts and hospitality be made publicly available?

A26 Yes – this is good practice and the City Council already places any entries alongside the public Register of Interests return of the appropriate Member.

Q27 Should members also need to declare offers of gifts and hospitality that are declined?

A27 Yes. This would be an improvement.

Q28 Should members need to declare a series of gifts from the same source, even if these gifts do not individually meet the threshold for declaration? How could we define this?

A28 Yes – although the process needs to be kept simple. Perhaps aggregation over a Municipal Year would be one way.

Q29 Is £25 an appropriate threshold for the declaration of gifts and hospitality?

A29 Yes.

OTHER CONSIDERATIONS:

CORPORATE STRATEGY (RELEVANCE TO):

The Council to be more open and democratic in its work

RESOURCE IMPLICATIONS:

As it is unlikely that any amendments to the Code would result in more local hearings, there are no particular resource implications.

BACKGROUND DOCUMENTS:

None