

STANDARDS COMMITTEE

1 December 2008

CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS - CONSULTATION

REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

Contact Officers: Stephen Whetnall/Chris Ashcroft Tel No: 01962 848220/01962  
848284 swetnall@winchester.gov.uk

RECENT REFERENCES:

ST56 – Revised Code of Conduct (18 June 2007)

EXECUTIVE SUMMARY:

The Government has issued a number of consultations and guidance documents which form part of its 'Communities in Control: Real People, Real Power' initiative.

The consultation which is the subject of this report relates to the Code of Conduct for Local Authority Members and Employees. It asks a number of questions related to the application of the Code to Members when acting in a non-official capacity, together with suggesting clarifications to certain wording in the Code which has caused some difficulty. Responses are requested by 24 December 2008, with a view to introducing any agreed amendments during 2009.

This report comments on each of the 12 questions that relate to the Members Code (the relevant extract from the consultation document is attached as Appendix A). The model code for local authority employees is a matter for the Council's Personnel Committee and is not discussed here.

RECOMMENDATION:

That the comments set out in this report, together with any additional comments or amendments which the Committee may wish to make, be forwarded to the Government as the response of this Authority to the consultation document.

## STANDARDS COMMITTEE

1 December 2008

### CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS - CONSULTATION

#### REPORT OF CORPORATE DIRECTOR (GOVERNANCE)

##### DETAIL:

1 Further to the Executive Summary, the questions and proposed responses are set out below:-

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

**Response 1** Yes, but only in certain circumstances as considered in other questions below. The overriding aim must be to achieve a proportionate balance, which protects the public good but does not unfairly impinge on a Member's private life, by including conduct which no reasonable person would think of as adversely affecting a Member's ability to perform his/her public duties in accordance with the Code. The broad approach linked with conviction of a criminal offence is supported.

**Question 2** Do you agree with this definition 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? Please give details.

**Response 2** Subject to detailed guidance from the Standards Board, the definition is sensible and workable. The inclusion of cautions in the definition would encompass a range of minor offences which would go against our comments in Response 1 above and so is not supported. There is also an issue with convictions that result in a low threshold fine (Level 1 - up to £200) and whether, on occasions, it may have been imposed for actions which, as mentioned above, no reasonable person would think of as adversely affecting a Member's ability to perform his/her public duties in accordance with the Code.

**Question 3** Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.

**Response 3** The definition is sensible and workable.

**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?

**Response 4** Yes, because to do otherwise would over-complicate the situation and potentially involve standards committees in making assumptions and comparative judgements about the criminal systems in other countries, which they are not equipped to make.

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

**Response 5** Yes, because a 'not guilty' verdict may render any Standards investigation unnecessary. There is also the practical aspect of trying to conduct an ethical investigation whilst the Police may still be continuing their own enquiries.

**Question 6** Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

**Response 6** Although this Authority has not had problems with the interpretation of any aspects of the Code, we support all the amendments as helpful clarifications and would request consideration of two more as follows:-

- (a) that declarations of personal or personal and prejudicial interests should be made at informal as well as formal member meetings, to ensure transparency and openness.
- (b) that it be clearly stated that Portfolio Holders can remain in a meeting, under the provisions of Sections 21(13)(a) of the Local Government Act 2000, in order that they can provide additional information to scrutiny bodies examining decisions or actions previously taken by the Executive.

We also support the automatic application of paragraph 12.2 to all parish councils, which relates to the right of members with personal and prejudicial interests to address meetings in certain circumstances. There has been confusion at some parish meetings about local adoption of this provision and a consistent approach would be simpler for all concerned and mirror what takes place at District level.

**Question 7** Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

**Response 7** No.

**Question 8** Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.

**Response 8** No.

**Question 9** Does the proposed 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?

**Response 9** This is a reasonable period.

**Question 10** Do you agree with the addition of the new general principle (that members should not engage in conduct which constitutes a criminal offence) being applied specifically to conduct in a member's non-official capacity?

**Response 10** Yes.

**Question 11** Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

**Response 11** Yes, 'criminal offence' is adequately defined.

**Question 12** Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

**Response 12** Yes.

OTHER CONSIDERATIONS:

3 CORPORATE STRATEGY (RELEVANCE TO):

6.1 An Efficient and Effective Council

4 RESOURCE IMPLICATIONS:

4.1 Although the proposals have the effect of increasing the scope of the Code, it is not considered that this will necessarily generate an increase in the amount of complaints received

BACKGROUND DOCUMENTS: None

APPENDICES: Appendix A – Extract from consultation document

# Chapter 2: Code of conduct for local authority members

## What is the code of conduct for?

- 2.1 The public has a right to expect high standards of conduct from their elected and co-opted members. The standards of conduct expected of local authority members are set out in the members' code, which is underpinned by the ten general principles. By signing up to the members' code, a member is actively taking on a formal obligation to abide by its requirements.
- 2.2 The members' code forms the bedrock of the conduct regime and aims to promote the public's trust and confidence in their members and faith in local democracy. It does this by providing a robust set of standards of behaviour for members to abide by and work within. In doing this, the code also protects members from unreasonable expectations of behaviour being put upon them. Since May 2008, allegations that a member has failed to comply with the provisions of the members' code are considered by local authority standards committees.
- 2.3 The current members' code is set out in the Local Authorities (Model Code of Conduct) Order 2007 which applies to members of relevant authorities in England and of police authorities in Wales. On its introduction, the Government gave an undertaking that the effectiveness of the code would be reviewed after it had been in operation for some time. We believe, drawing on the Standards Board's practical experience that the members' code is, broadly, operating very well. However, as it has been in force for over a year, we consider that it is now appropriate to review the code.
- 2.4 Most importantly, we propose that the members' code be restructured by revoking the existing Order and making a new one. We propose that the new members' code will be differently formatted to the existing code, making it easier to interpret and clearer in its application, for instance by dividing it into two sections: the first dealing with members' conduct when acting in an official capacity and reflecting what is in the current code, the second dealing with members' conduct in their non-official capacity.

## Application of the code to members' conduct in their non-official capacity

- 2.5 Trust in our local authority members is one of the cornerstones of local

democracy. Members should inspire trust and confidence from those who elected them, set an example of leadership for their communities and should be expected to act lawfully even when they are not acting in their role as members.

- 2.6 This view was supported by those who responded to the Standards Board for England's consultation on the members' code in 2005. Responses indicated a clear view that a member's conduct in a non-official capacity was an issue that they considered should be covered by the members' code, particularly where that conduct amounts to a criminal offence.
- 2.7 It has always been our intention for the members' code to apply to a limited extent to the conduct of members in a non-official capacity. We wish now to clarify which provisions of the members' code apply in a member's official capacity and to put beyond doubt which provisions apply to a member's conduct in a non-official capacity.
- 2.8 The need to clarify what conduct in a member's non-official capacity is covered by the members' code arose as a consequence of a court judgment in 2006. This cast doubt on the ability of the code to cover members' conduct not linked to the performance of their public duties. As was made clear by Ministers during the passage of the Local Government and Public Involvement in Health Act 2007, we consider that certain behaviour, even when 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.
- 2.9 We propose therefore that the new members' code should, in the section covering the conduct of members in their non-official capacity, contain the following provision prohibiting particular conduct where that conduct would constitute a criminal offence:

"Members must not bring their office or authority into disrepute by conduct which is a criminal offence".

#### **Consultation Question 1:**

Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

### **Definition of 'criminal offence' and 'official capacity'**

- 2.10 The Local Government and Public Involvement in Health Act 2007 gave the Secretary of State the power to define, for the purposes of the members' code, what constitutes a 'criminal offence'. We propose for the purpose of the members' code, 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.

- 2.11 Our intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the conduct regime. We consider that this approach will ensure that the most minor criminal offences, for example minor motoring offences, parking offences and dropping litter as well as cautions and orders falling short of a criminal conviction by a court, will not be included in the remit of the members' code. However, serious criminal offences which we consider should come under the remit of the members' code, such as assault, harassment, fraud and offences relating to child pornography will be included in the remit of the code.
- 2.12 We propose that the Standards Board for England will issue guidance for local authority standards committees on how a criminal offence should be treated in its application to the conduct regime.

**Consultation Question 2:**

Do you agree with this definition 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? Please give details.

- 2.13 The Local Government and Public Involvement in Health Act 2007 also gave the Secretary of State power to define, for the purposes of the members' code, what constitutes 'official capacity'.
- 2.14 We propose that for the purposes of the members' code, '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 your authority.

**Consultation Question 3:**

Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.

## Offending abroad

- 2.15 We also propose that the members' code would engage with conduct committed in a foreign country, where that conduct constitutes a criminal offence in that country, but only where the conduct would also constitute a criminal offence if it was committed in the UK. However, the code would only apply if the individual was convicted in the country in which the offence was committed.



**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?

## What does this mean?

- 2.16 Our proposals would have the effect of providing that the only conduct in a member's non-official capacity which is engaged by the code, is conduct which constitutes a criminal offence, as defined in paragraph 2.10 above. The code may only then be applied to that conduct when the evidence that the member's conduct constituted a criminal offence is provided by the criminal conviction of the member in the courts.
- 2.17 This would mean, for example, that a member who was convicted of a criminal offence of assault or harassment could be held to have breached the code, even if the conduct, which led to the conviction took place entirely outside the member's official capacity.

## Criminal conviction of a member

- 2.18 It should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by section 80 of the Local Government Act 1972, with the member automatically disqualified from office for five years. We are not proposing any changes to this legislation.

## The conduct regime

- 2.19 At present, investigations into alleged breaches of the members' code are triggered by a written allegation made to the standards committee of the local authority concerned. We propose that this continue to be the case when dealing with allegations of misconduct in relation to a member's conduct in their non-official capacity.
- 2.20 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the standards committee or the Standards Board, as the case may be, would cease their investigation process until the criminal process had been completed. Any subsequent action under the conduct regime in respect of a member's private conduct would follow the conclusion of the criminal procedure. The member would not be suspended during the period of the criminal process.

2.21 For the purpose of the conduct regime, the criminal process will be considered to have been completed at the conclusion of any appeals process.

#### Consultation Question 5:

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

## Proposed revisions to the members' code

2.22 This consultation paper also seeks views on the following amendments which we propose to make to the provisions of the existing code. The proposed amendments reflect discussions with the Standards Board and, in particular, the Board's experience of the practical operation of the code over the last year.

2.23 In order to aid your consideration of our proposed amendments to the members' code, the substance of the present code is reproduced at **Annex B** to this paper. Guidance on the provisions of the members' code is available on the Standards Board for England's website at [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

### Parish councils

2.24 It has been suggested that article 2(5) of the Local Authorities (Model Code of Conduct) Order 2007 be amended to apply paragraph 12(2) to parish councils, to make it mandatory for parish councils that a member with a prejudicial interest may make representations at a meeting only if members of the public are able to attend that meeting for the same purpose. Currently, if a parish council wishes this provision to apply, it must make a conscious decision to adopt paragraph 12(2) into its code. This amendment would save unnecessary administration and ensure consistency across parish councils.

### Membership of other bodies

2.25 It has been suggested that paragraphs 8(1)(a)(i) and (ii) of the current members' code be amended to clarify that the sections are referring to other bodies that you are a member of or which exercise functions of a public nature, putting it beyond doubt that this is not a reference to the authority itself.

### Personal interests

2.26 It has been suggested that current wording of paragraph 8(1)(a) of the members' code could be amended to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25 in his or her register of members' interests.

### Prejudicial interests

- 2.27 It has been suggested that paragraph 10(2) of the code be amended to remove the double negative in the current drafting, to make it clear that a prejudicial interest exists where the business of your authority affects your financial position or the financial position of a person listed in paragraph 8 of the code or it relates to the determining of any approval, consent, licence, permission or registration in relation to you or those persons listed in paragraph 8 of the code.
- 2.28 It has been suggested that the meaning of ‘determining’ in paragraph 10(2)(b) could be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.
- 2.29 It has also been suggested that paragraph 10(2)(c) could be amended to clarify that a member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a member of the authority had failed to comply with the code.

### Registration of members’ interests

- 2.30 We propose that any new members’ code would take into account any existing registration of members’ interests. This will ensure that members who have already registered their interests in line with the 2007 model code do not have to repeat the process when the revised members’ code is introduced.

#### Consultation Question 6:

Do you think that the amendments to the members’ code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

#### Consultation Question 7:

Are there any aspects of conduct currently included in the members’ code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

#### Consultation Question 8:

Are there any aspects of conduct in a member’s official capacity not specified in the members’ code that should be included? Please give details.

## Legislative context

- 2.31 The current members' code is set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 made under powers conferred on the Secretary of State by section 50 of the Local Government Act 2000.
- 2.32 Section 183 of the Local Government and Public Involvement in Health Act 2007 inserted, into section 50 of the Local Government Act 2000, a requirement for the Secretary of State to specify which provisions of the members' code apply in relation to a member's conduct when acting in an official capacity and which provisions apply when not acting in an official capacity. A provision may only be specified to apply to members' conduct when not acting in an official capacity if the conduct it prohibits constitutes a criminal offence. The power in section 50 of the Local Government Act 2000 permits the Secretary of State to define for the purposes of the members' code what is meant by "criminal offence" and what is meant by "official capacity".
- 2.33 We propose that the existing Local Authorities (Model Code of Conduct) Order 2007 be revoked and a new, revised Order would be made to reflect our proposed amendments and that part of the code applies to a member's conduct in their official capacity and part of it would apply to a member's conduct in their non-official capacity.
- 2.34 Provision is also made in section 183 of the Local Government and Public Involvement in Health Act 2007 for members to give to their authority an undertaking to observe the new code within a period prescribed by the Secretary of State. We propose that members will have two months from the date their authority adopts the new code to give a written undertaking that they will observe their authority's code. Failure to do so will mean that they cease to be members of the authority.

### Consultation Question 9:

Does the proposed 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?

# Proposed amendments to the General Principles

## What are the General Principles?

- 2.35 The ten General Principles, contained in the Relevant Authorities (General Principles) Order 2001, are based on the seven principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the members' code, which must be consistent with these principles.
- 2.36 The ten general principles are reproduced below. The principles govern the conduct of members, and a failure to act in accordance with them may lead to a failure to comply with the members' code.

### The General Principles

#### *Selflessness*

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

#### *Honesty and Integrity*

2. Members should not place themselves in a situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

#### *Objectivity*

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

#### *Accountability*

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

#### *Openness*

5. Members should be as open as possible about their actions and those of their authority and should be prepared to give reasons for those actions.

#### *Personal Judgement*

6. Members may take account of the views of others, including their political

groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

*Respect for Others*

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

*Duty to uphold the law*

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

*Stewardship*

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

*Leadership*

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

## Proposed revisions

2.37 We propose that the Relevant Authorities (General Principles) Order 2001 be amended to make clear which principles govern the conduct of members when acting in an official capacity and which principles will apply to the conduct of members when acting in a non-official capacity, where the member's conduct would constitute a criminal offence.

2.38 We propose that the General Principles Order be amended by providing that the 10 existing principles apply to a member when acting in an official capacity and by adding a new principle which would be specified as applying to a member acting in an non-official capacity, where the member's conduct would constitute a criminal offence. We propose that the following be added to the Schedule of the Relevant Authorities (General Principles) Order 2001:

*Duty to abide by the law*

Members should not engage in conduct which constitutes a criminal offence.

**Consultation Question 10:**

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

## Definition of 'criminal offence' and 'official capacity'

2.39 Section 49 of the Local Government Act 2000 enables the Secretary of State to define what constitutes a 'criminal offence' and what constitutes 'official capacity' in the context of the General Principles Order. For the purposes of the revised General Principles Order, we propose that 'criminal offence' be defined as any conduct that has resulted in a criminal conviction.

**Consultation Question 11:**

Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

2.40 We propose that for the purposes of the revised General Principles Order, '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 your authority".

**Consultation Question 12:**

Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

## Legislative Context

2.41 The Relevant Authorities (General Principles) Order 2001 was made under powers conferred on the Secretary of State in section 49 and 105 of the Local Government Act 2000. Section 183 of the Local Government and Public Involvement in Health Act 2007 modified section 49 of the 2000 Act and it is this modification that requires the Secretary of State to specify which general principles apply to a person when acting in an official capacity and when acting in a non-official capacity.