

**Report to:** Functions Committee and Standards Committee  
**Date of meeting:** 26th November and 10<sup>th</sup> December 2008  
**Report of:** Head of Legal and Property Services  
**Title:** DCLG Consultation Paper 'Communities in control: Real people, real power Codes of conduct for local authority members and employees'

1.0 **SUMMARY**

- 1.1 Attached as appendix 1 is a consultation paper from the DCLG on proposals for further revisions to the existing Code of conduct for Councillors and the introduction of a code of conduct for local authority employees.
- 1.2 The consultation ends on the 24<sup>th</sup> December 2008 and the paper indicates any changes will be implemented from June 2009 after the next local elections.

2.0 **RECOMMENDATIONS**

- 2.1 To respond to the consultation as set out in paragraphs 3.14 and 3.24 below.

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**Report approved by:** Managing Director

3.0 **DETAILED PROPOSAL**

3.1 The Department of Communities and Local Government has issued a consultation paper entitled 'Communities in control: real people, real power Codes of conduct for local authority members and employees'

3.2 It is attached at appendix 1. It is divided into 2 parts the first is making proposals for further amendments to the existing Code of conduct for councillors, the second is making proposals for the introduction of a code of conduct for employees that would be incorporated into terms and conditions of employment.

3.3 **Proposals relating to the Code of Conduct for Councillors**

3.4 The consultation paper proposes clarifying when the code of conduct would apply to members in their non-official capacity. It is proposed that the only occasion on which the code would apply to a member in their non official capacity is when their conduct would constitute a criminal offence.

3.5 It is proposed that there is a clear definition of what is a criminal offence for the purposes of the code and what constitutes a member's 'official capacity'.

3.6 Criminal offence is 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'.

3.7 Official capacity is 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'.

3.8 It is also proposed that any criminal convictions abroad that would also be a criminal offence in this country would also be a breach of the code.

3.9 The consultation paper also proposes that if a complaint is made about a member's conduct whilst a criminal investigation is underway no investigation by either the local standards committee or the Standards Board for England take place until all criminal processes have been exhausted including any appeals.

3.10 There is no intention of removing the provisions of s80 of the Local Government Act 1972 whereby a conviction and sentence of imprisonment for 3 months or more even if suspended without the option of paying a fine automatically leads to disqualification.

3.11 The paper also makes some proposals to make some minor tidying up of existing provisions to provide clarity.

3.12 It also proposes adding to the existing 10 general principles that govern the conduct of members by adding an extra one 'Duty to abide by the law' 'A member should not engage in conduct which constitutes a criminal offence'.

3.13 Finally in this section it proposes that members be required to sign up to any revised code within 2 months of their authority adopting it.

3.14 The consultation questions in this part are as follows together with suggested answers;

- Q1 Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?
- Answer. Yes, where it is restricted to criminal activity for which a

- member has been convicted.
- Q2. 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.
- Answer. The definition is acceptable.
- Q3 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.
- Answer. This definition is acceptable.
- Q4 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?
- Answer. Restricting it in this way could lead to difficulties for local standards committees in being able to establish if the matter would have an equivalent offence in this country. If the intention is to include offences committed abroad then the fact of the conviction should be sufficient.
- Q5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?
- Answer. In the light of the definition of when the code has been breached, namely conduct which is a criminal offence and the definition of criminal offence as having had a conviction then this is the only sensible course of action. This would only apply to matters in a members non-official capacity. If an allegation related to a member's official capacity it might well be necessary to continue to investigate, or it might be that an investigation brought to light the criminal activity that would then need to be reported to the police.
- Q's 6,7 and 8
- Do you think 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? 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? Are there any aspects of conduct in a members' official capacity not specified in the members' code that should be included? Please give details.
- Answers. The drafting amendments are sensible. No aspects of the current code are not required and no matters are currently omitted that should be included.
- Q9 Does the proposed timescale of 2 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?
- Answer. Yes it does give sufficient time.
- Q10 Do you agree with the addition of this new general principle applied specifically to conduct in a member's non-official capacity?
- Answer. It seems to be 'stating the obvious' and therefore unnecessary

- Q11 Do you agree with the broad definition of ‘criminal offence’ for the purpose of the General Principles Order? Or do you consider that ‘criminal offence’ should be defined differently?
- Answer. The definition should be the same as in the code of conduct.
- Q12 Do you agree with this definition of ‘official capacity’ for the purpose of the General Principles Order?
- Answer. Yes

3.15 **Proposals regarding Model Code of Conduct for local government employees.**

3.16 The consultation paper suggests that a model code is needed for employees to provide an effective ethical framework within which to work and it should give that authority’s citizens confidence that an authority’s staff are working on their behalf in an appropriate manner.

3.18 The paper suggests the code would be incorporated into employees’ terms and conditions.

3.19 Where employees are already subject to a code of conduct as a result of their professional qualification e.g. Solicitor, Community Support Officer, the government feel that it would not be necessary for those staff to be subject to the model code.

3.20 The Government are considering imposing a two-tier model. The first tier would apply to all employees and enshrine the core values that it is reasonably expected that all employees would be expected to abide by. The second tier would apply to ‘qualifying employees’ that is senior officers or those carrying out delegated functions.

3.21 The consultation paper sets out the proposed core values of accountability, political neutrality, relations with members, the public and other employees, equality, stewardship, personal interests, whistleblowing, treatment of information, appointment of staff, and investigations by monitoring officers.

3.22 The core values for ‘qualifying employees’ reflect the same principles as set out in the councillors’ code namely, compromising the impartiality of officers, using your position improperly, considering advice and giving reasons, personal interest.

3.23 Whilst these principles are suitable for members a number seem unrealistic when applied to officers. For example considering advice. The proposal states ‘If a qualifying employee seeks advice, or advice is offered to them, on aspects of how the employees’ code applies, the qualifying employee must have regard to this advice. It does not specify who the advice might be coming from and it is unclear what would be achieved by making it a breach of the code to disregard any advice offered.

There are also detailed provisions with regard to registering interests in similar terms to the requirements of the councillors’ code, including registering any land holding in your authority’s area. Unless an officer is dealing specifically with issues relating to land e.g. planning applications the requirement seems excessive.

3.24 The consultation questions in this part are as follows:

- Q13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees’ terms and conditions of employment, is needed?

- A. Most Councils already have a staff code of conduct. Whether there should be one model code for all in the interest of consistency of standards is a matter for the Local Government Employers and Trades Unions to deal with and is not a matter for legislation.
- Q14 Should we apply the employees' code to firefighters, teachers, community support officers and solicitors?
- A. If a code is to be implemented it should be implemented for all staff for consistency and ease of administration. There are many professional bodies with appropriate codes and exempting the members of some of those bodies but not others, makes no sense. Equally having a large number of staff exempted will be confusing.
- Q15 Are there any other categories of employee in respect of whom it is not necessary to apply the code of conduct?
- A. As stated above, if there is to be a national staff code, it needs to be easily understood and so universally applicable. If there are to be exemptions then any professional body with a code must qualify and not just the few identified.
- Q16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been omitted that should be included?
- A. It would appear to accurately reflect the necessary core values.
- Q17 Should the selection of 'qualifying employees' be made on the basis of a 'political restriction' style model or should qualifying employees be selected using the delegation model?
- A. As the current rules on politically restricted posts can encompass relatively junior officers because of the pay scales it relates to it would be sensible to restrict qualifying employees to those exercising delegated powers.
- Q18 Should the code contain a requirement for qualifying employees to publicly register any interests?
- A. Unlike members who stand for election by the community they serve, officers are employees and therefore it is not reasonable to expect them to publicly register their private information and interests. They should be required to complete a register but it should not be publicly available. Of course, an employee who fails to register a potential conflict of interest will almost certainly commit a disciplinary offence that could lead to dismissal and could commit a criminal offence.
- Q19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
- A. The category of registering a delegated function should not be registered. The authority's scheme of delegation in its constitution will make it clear who is able to exercise delegated powers. Also appointments by the authority to other bodies will also be in the public domain as will details of land holdings.
- Q20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code. Have any been omitted?

- A The requirement to have regard to advice seems somewhat over the top, particularly as it refers to advice 'offered' and does not specify who may be 'offering' the advice.
- Q21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?
- A. Yes see answer to Q20 [The aspect about putting professionals under pressure is a nonsense - a jobsworths' charter. A lot of professionals hide behind their expertise to frustrate political objectives when it has less to do with their professional judgement than with their personal prejudice/political leanings. Good statutory officers will lean hard on them, flush out any bias and ensure the members get a balanced report. Ultimately the chief executive is responsible for the quality of corporate professional advice to the council and there is a serious risk of undermining that role.](#)

#### 4.0 **IMPLICATIONS**

##### 4.1 **Financial**

4.1.1 The Director of Finance comments that [there are no financial implications arising directly from this report. When the Codes are finalised, it will be necessary to devote resources to ensuring that Members and Officers are familiar with their requirements. This may have cost implications, depending on the extent of change](#)

##### 4.2 **Legal Issues** (Monitoring Officer)

4.2.1 The Head of Legal and Democratic Services comments that there are no specific legal implications in this report

#### Appendices

Consultation Paper

#### Background Papers

\*"No papers were used in the preparation of this report".

#### File Reference

None