

Brighton & Hove City Council

For general release

Meeting: Standards Committee

Date: 19th October 2004

Report of: Director of Strategy and Governance
And Monitoring Officer

Subject: Draft Model Code of Conduct for Local Government
Employees

Ward(s) affected: All

1. Purpose of the report

- 1.1 The report brings to the Committee's attention a recent consultation paper issued by the Office of the Deputy Prime Minister (ODPM) on a draft model code of conduct for local government employees. The report also outlines the key issues contained in the draft code and suggests potential responses to the accompanying consultation paper.

2. Recommendations

- 2.1 That members note the provisions of the draft model code of conduct for local government employees.
- 2.2 That the monitoring officer be instructed to respond to the consultation paper with the comments as set out in the report and with any further comments of the Director of Human Resources.

3. Information/background

- 3.1 The ODPM has published a consultation paper on a *Model Code of Conduct for Local Government Employees*. The closing date for comments to the ODPM is 19th November 2004. A code of conduct

- already exists for elected and co-opted members of local authorities and the government is seeking to establish a broadly similar code for employees to reassure the public of the overall probity of local government. The (draft) *Model Code of Conduct for Local Government Employees* is appended at Appendix 1 of this report.
- 3.2 This is an issue which the government has said for some time that it will review. In 2000, a working group was set up to consider and advise the ODPM on the draft code. This consultation paper differs from the work that the working group carried out.
- 3.3 The Welsh Assembly has separately considered a code of conduct for **Welsh** authority employees which was introduced in 2001. This is significantly different to the proposed model code of conduct for English local government employees. The Welsh code is appended to this report at Appendix 2 so that Members can compare this with the English draft code.
- 3.4 This report outlines the key issues contained in the draft code and suggests a potential response to the consultation paper.

Categories of Employees covered

- 3.5 Teachers and firefighters already have their own codes of conduct and consequently the ODPM do not propose that the draft code should apply to them. The ODPM is not considering excluding any other staff. However, the consultation paper asks whether there is a case for excluding school support staff, who, like teachers are guided in their conduct by the school's policies and held accountable, through the headteacher, to the governing body. In response to that question it is suggested that this council supports the proposal to exclude school support staff from the code.
- 3.6 Similarly, under the Police Reform Act 2002, the Home Office is considering standards of conduct and is committed to producing a code of practice which will cover standards of conduct for community support officers. The ODPM is seeking views on whether there are other categories of employees who should not be subject to the employee's code. With the exception of those categories of staff mentioned above it is recommended that this council supports the proposal that the code should apply to all other categories of local authority staff.

Issues

- 3.7 The draft model code of conduct for local authority employees deals with ten separate points and the ODPM is seeking views on each of them to know whether the principles set out in the code are the right ones and bite at the right level. The code proposes requirements in the following areas:
- Honesty, Integrity, Impartiality and Objectivity
 - Accountability
 - Respect for Others
 - Stewardship
 - Personal Interests
 - Registration of Interests
 - Reporting Procedures
 - Openness
 - Appointment of Staff
 - Duty of Trust
- 3.8 The broad thrust of the code of conduct is to be welcomed, but some practical implementation issues need to be worked through in more detail. The desire to uphold the high standards of probity, accountability and objectivity that the public and the authority expects of local government staff is to be applauded. However, in drafting the model code for employees so that it closely mirrors the elected members' code, the ODPM has shown that it does not sufficiently recognise the distinct roles that members and officers play.

Registration of Interests

- 3.9 The main issue that the consultation paper raises, which was not one of the outcomes from the working party, is the issue of **registration of interests** for local authority employees. This is also dealt with differently by the Welsh Code. ODPM raises the suggestion that an employee must comply with requirements of the authority to a) register or declare interests and b) declare hospitality, benefits or gifts received as a consequence of employment. Unlike the members code of conduct there is no monetary value, above which, gifts and hospitality received in the course of their job must be declared by employees. For members this is currently £25 or more.

- 3.10 The Local Government Act 2000 requires monitoring officers to establish and maintain a register of the interests of their authority's members and it seems that this attempted mirroring of the members' code has led to the suggestion of a register for employees' interests. The members' register provides an accessible record of elected members' interests and indicates the sorts of influences which might affect the way that the member makes decisions.
- 3.11 However, the sorts of decision-making that most local authority officers are engaged in are not the same as the policy making decisions that elected members make (except in situations of delegated authority). So it could be argued that a distinction should be drawn between the member and the officer code.
- 3.12 In considering the need for a register it is important to note that the Local Government Act 1972 already obliges staff to declare interests which might affect the tendering process. Some authorities, including this council, have already considered the issue of personal interests when developing local codes of conduct for employees. This authority's current code of conduct for employees' requires that employees must declare, to an appropriate manager: any financial and non-financial interests that they consider could bring about conflict with the authority's interests; and membership of any organisation not open to the public, without formal membership and commitment of allegiance and which has secrecy about rules or membership or conduct. It is suggested that this council's approach to such declarations of financial and non financial interest is sufficient as opposed to the need to maintain a register of such interests.
- 3.13 The proposal for a register of a standard list of interests which could cover financial and non-financial interests takes the current position much further. The ODPM poses the question as to whether this register should be available publicly. This would seem not only to be an extremely onerous responsibility for local authorities to maintain but also inappropriate for an employee's personal and family circumstances to be open to unnecessary scrutiny when it may have no relevant bearing on their job or the interests of the authority. In deciding where to draw the line it is suggested that this authority supports the need for declarations of financial and non-financial to be made to the employees line manager, on the basis of as and when potential conflicts of interest may arise and that

there should not be a standard list of financial and non-financial interests that must always be registered.

3.14 Secondly, when considering the declaration and registration of hospitality, benefits or gifts it would seem sensible for local authority staff to treat the offers of such gifts with caution and to accept them only where there is a genuine need to represent the authority. On such occasions it is suggested that this council supports that;

- ◆ the acceptance of the gift or hospitality should be authorised by the appropriate director and recorded.
- ◆ authorities should permit employees to keep insignificant items of token value, such as pens, diaries etc.
- ◆ the suggestion of a maximum permitted monetary value be considered such as is contained in the members' code but that this level should be set at £15 or more. This would remove the need, for example, for home helps to declare boxes of chocolates which they receive from clients at Christmas.

4. Omissions from the draft code

Political neutrality

4.1 The draft model code does not contain any provisions that employees must behave in a politically neutral way. This is currently a requirement of the council's existing code for employees. It is also a requirement of the code of conduct for Welsh local authority staff (see Appendix 2). It is suggested that this council recommends that this omission be rectified.

Equality

4.2 The Welsh code of conduct makes provision that local authority employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law. Equalities issues have been omitted from the draft local code and it is therefore suggested that this council suggests this provision be included in the final version.

Investigations by Monitoring Officers

- 4.3 Where a monitoring officer is undertaking an investigation in accordance with regulations made under the Local Government Act 2000, the Welsh code of conduct requires that employees must comply with any requirements made by that monitoring officer in connection with such an investigation. This provision has also been left out of the draft model code. It is proposed that this council recommends this be included in the model code.

5. What next?

- 5.1 Following the results of consultation the ODPM will introduce a statutory instrument in parliament. Once this has come into force the code will apply to all relevant local government employees and will be considered part of the employees' terms and conditions of employment. Any breaches of the code will be dealt with under the council's local disciplinary procedures and existing employment law. Consequently, there is no proposal to mirror the Standards Board which deals with breaches of the code for elected members.

6. Consultation

- 6.1 Annex B to the draft code consultation paper lists all the consultees that ODPM have sent the consultation paper to including the public sector trade unions.
- 6.2 The Committees views are sought on the council's response to the consultation paper and on the recommendation that the monitoring officer should respond to the consultation paper endorsing and supporting the comments as set out in this report.
- 6.2 In addition to this council consulting its Standards Committee, the views of the Director of Human Relations will also be sought. Those views will be collated into the council's response to ODPM.

Contact Officer – Dianne Bates, tel. 291513

The consultation paper can be downloaded from the ODPM web-site <http://www.odpm.gov.uk> then go to Local Government then consultation papers

APPENDIX 2

Welsh Statutory Instrument 2001 No. 2280 (W.170)
The Code of Conduct (Qualifying Local Government Employees) (Wales)
Order 2001

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STATUTORY INSTRUMENTS

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2001 No. 2280 (W.170)

LOCAL GOVERNMENT, WALES

The Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001

Made 21st June 2001

Coming into force 28th July 2001

The National Assembly for Wales makes the following Order in exercise of the powers conferred upon it by sections 82(2) and 105(1) of the Local Government Act 2000[1].

Citation, commencement and application

1. - (1) This Order may be cited as the Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001 and shall come into force on 28th July 2001.

(2) This Order applies to each relevant authority in Wales.

Interpretation

2. In this Order -

"the Act" ("y Ddeddf") means the Local Government Act 2000;

"qualifying employee" ("cyflogai cymwys"), in relation to a relevant authority, means an employee of the authority other than an employee falling within any description of employee specified in regulations made by the National Assembly for Wales under section 82(8) of the Act[2];

"relevant authority" ("awdurdod perthnasol") means -

- (a) a county council,
- (b) a county borough council,
- (c) a community council,
- (d) a fire authority constituted by a combination scheme under the Fire Services Act 1947[3], or

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- (e) a National Park authority established under section 63 of the Environment Act 1995[4].

Code of conduct for a qualifying employee of a relevant authority

3. The code as regards the conduct which is expected of a qualifying employee of a relevant authority is set out in the Schedule attached to this Order.

Signed on behalf of the National Assembly for Wales under section 66(1) of the Government of Wales Act 1998[5].

D. Elis-Thomas
The Presiding Officer of the National Assembly

21st June 2001

SCHEDULE
Article 3

CODE OF CONDUCT FOR QUALIFYING EMPLOYEES OF RELEVANT
AUTHORITIES IN WALES

Title: db/standards/report Draft Model Code of Conduct for Employees 191004

General Principles

1. The public is entitled to expect the highest standards of conduct from all qualifying employees[6] of relevant authorities[7]. The role of such employees is to serve their employing authority in providing advice, implementing its policies, and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

2. Qualifying employees of relevant authorities work for their employing authority and serve the whole of that authority. They are accountable to, and owe a duty to that authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political Neutrality

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3. Qualifying employees of relevant authorities, whether or not politically restricted[8], must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where qualifying employees are politically restricted (by reason of the post they hold, the nature of the work they do, or the salary they are paid), they must comply with any statutory restrictions on their political activities.

Relations with members, the public and other employees

4. Mutual respect between qualifying employees and members is essential to good local government, and working relationships should be kept on a professional basis.

5. Qualifying employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently, and without bias.

Equality

6. Qualifying employees of relevant authorities must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

7. Qualifying employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner,

and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

Personal Interests

8. Whilst qualifying employees' private lives are their own concern, they must not allow their private interests to conflict with their public duty. They must not misuse their official position or information acquired in the course of their employment to further their private interests, or the interests of others. In particular, they must comply with:

(1) any rules of their relevant authority on the registration and declaration by employees of financial and non - financial interests,

(2) any rules of their relevant authority on the declaration by employees of hospitality or gifts offered to or received by them, from any person or organisation doing or seeking to do business, or otherwise benefiting or seeking to benefit from a relationship with the authority. Qualifying employees must not accept benefits from a third party unless authorised to do so by their relevant authority.

Whistleblowing

9. In the event that a qualifying employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with this Code, the employee should report the matter, acting in accordance with the employee's

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rights under the Public Interest Disclosure Act 1998, and with the relevant authority's confidential reporting procedure, or any other procedure designed for this purpose.

Treatment of Information

10. Openness in the dissemination of information and decision making should be the norm in relevant authorities. However, certain information may be confidential or sensitive and therefore not appropriate for a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of Staff

11. Qualifying employees of relevant authorities involved in the recruitment and appointment of staff must ensure that appointments are made on the basis of merit. In order to avoid any possible accusation of bias, such employees must not be involved in any appointment, or any other decisions relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related, or with whom they have a close personal relationship outside work.

Investigations by Monitoring Officers

12. Where a monitoring officer is undertaking an investigation in accordance with regulations made under section 73(1) of the Local Government Act 2000[9] a qualifying employee must comply with any requirement made by that monitoring officer in connection with such an investigation.

EXPLANATORY NOTE

(This note does not form part of the Order)

Part III of the Local Government Act 2000 ("the Act") establishes a new ethical framework for local government in Wales.

Section 82(2) of the Act provides that the National Assembly for Wales may by order issue a code as regards the conduct which is expected of certain employees of relevant authorities in Wales ("the code of conduct").

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The relevant authorities are county, community and county borough councils, fire authorities and National Park authorities but not police authorities.

Employees of relevant authorities to which the code of conduct does not apply are those who fall within any description of employee in regulations made by the National Assembly for Wales under section 82(8) of the Act.

By virtue of section 82(7) of the Act, the terms of appointment or conditions of employment of employees of relevant authorities to whom

the code of conduct applies are to be deemed to incorporate the code of conduct set out in the Schedule to this Order.

Notes:

[1] 2000 c.22.back

[2] S.I. 2001/2278 (W.168).back

[3] 1947 c.41.(d) 1995 c.25.back

[4] 1995 c.25.back

[5] 1998 c.38.back

[6] Employees of relevant authorities in Wales who do not fall within any description of employee specified in the Code of Conduct (Non-Qualifying Local Government Employees) (Wales) Regulations 2001 (S.I. 2001/ (W.)) are qualifying employees.back

[7] A relevant authority, in relation to Wales, means a county, county borough or community council, a fire authority constituted by a combination scheme under the Fire Services Act 1947 or a National Park authority established under section 63 of the Environment Act 1995.back

[8] A qualifying employee who holds a politically restricted post is disqualified from becoming or remaining a member of a relevant authority (see sections 1-3 of the Local Government and Housing Act 1989 (c.42) and the Local Government Officers (Political Restrictions) Regulations 1990 (S.I. 1990/851) as amended by the Local Government

Officers (Political Restrictions) (Wales) (Amendment) Regulations 1999 (S.I. 1999/1665)).back

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[9] The Local Government Investigations (Functions of Monitoring Officers and Standards Committees) (Wales) Regulations 2001 (S.I. 2001/ 2281 (W.171)).back

Cymraeg (Welsh)

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COMMITTEE REPORT APPENDIX



Meeting/Date	19 th October 2004
Report of	Director of Strategy & Governance and Monitoring Officer
Subject	Draft Model Code of Conduct for Local Government Employees
Wards affected	All

Financial implications

The draft Model Code of Conduct strengthens the council's internal financial control framework particularly around the prevention of fraud and corruption

Finance Officer consulted: Steve Linnett

Date 7th October 2004

Legal implications

Section 82 of the Local Government Act 2000 allows the Secretary of State to issue a code of conduct for local authority employees in England

Lawyer consulted: Dianne Bates

Date 27th September

Corporate/Citywide implications

The code of conduct once it is published will need to be brought to the attention of all employees

Risk assessment

There are no implication arising directly from this report

Sustainability implications

There are no direct environmental implications arising from this report

Equalities implications

Equalities issues have been omitted from the draft code of conduct. This has been addressed in the report

Implications for the prevention of crime and disorder

There are no implications for the prevention of crime and disorder arising from this report

COMMITTEE REPORT APPENDIX



Background papers

Local Government Act 2000

Consultation Paper – A Model Code of Conduct for Local Government Employees published by ODPM

Welsh Statutory Instrument 2001 No. 2280 – The Code of Conduct (Qualifying Local Government Employees) (Wales) (Order) 2001

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