

Subject:	Codes of Conduct for local authority members and employees		
Date of Meeting:	11 November 2008		
Report of:	Director of Strategy & Governance		
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Wards Affected:	All		

FOR GENERAL RELEASE.**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 This report brings to the Committee's attention a recent consultation paper, "Communities in control: Real people, real power Codes of conduct for local authority members and employees" issued by CLG on revisions to the model code of conduct for members and the introduction of a model code for officers. The report outlines the key issues contained in the paper, and suggests potential responses to the questions posed therein.

2. RECOMMENDATIONS:

- 2.1 (1) That members note the proposed changes to the Code of Conduct and the provisions of the draft local model code for local authority employees.
- 2.2 (2) That the monitoring officer be instructed to respond to the consultation paper with the comments as set out in the report, together with any further comments the Committee may make.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

- 3.1 The White Paper, "Communities in control: Real people, real power" was about passing power into the hands of local communities. The paper, "Communities in control: Real people, real power Codes of Conduct for local authority members and employees" is the next in a series consulting on a number of policy commitments. It invites views on proposals for revising the model code of conduct for local authority members ("the members' code"), principally to clarify its application to members' conduct in their non-official capacity. It also invites views on proposals for associated changes to the Relevant Authorities (General Principles) Order 2001 which

sets out the general principles which govern the conduct of local authority members. Finally it seeks comments on proposals to incorporate a code of conduct for employees, based on the model code of conduct, into the terms and conditions of employment of their employees (“the employees’ code”).

- 3.2 The paper, which was published on 1 October 2008 is attached as Appendix 1 to the report. The deadline for responding to the paper is 24 December 2008.
- 3.3 Subject to the responses to the consultation, the Government has indicated that it is minded to implement the proposals in the consultation paper so that they come into effect in line with the 2009 local government elections.
- 3.4 The Standards Board for England has welcomed the proposed changes.
- 3.5 The report outlines the key issues contained in the paper, and suggests a potential response.

Application of the code to member’s conduct in their non-official capacity

Members should inspire trust and confidence in those who elected them. Poor behaviour can adversely affect that trust. It is appropriate that the members’ code be extended to apply to members acting in their non-official capacity, as long as the term “non-official” is carefully defined.

Definitions of “criminal offence” and “official capacity”

The proposed definition of criminal offence, “any criminal offence for which the member has been convicted in a criminal court” seems to serve its purpose. However, there is no discussion in the paper of whether civil infringements, comparable to a criminal conviction, should be covered by the new code. The making of an Anti-social behaviour order (ASBO) against a member would not be covered, even though the behaviour necessary to justify the making of the ASBO would be likely to bring the member’s office or authority into disrepute. For an ASBO to be made, the person concerned must have acted in an anti-social manner, that is to say, in a manner that has caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself (Section 1 (1) (a), Crime and Disorder Act 1998)

With regard to the proposal to exclude offences capable of attracting fixed penalty notices, such offences may be relevant when considering a particular member’s role. A series of fixed penalty notices for parking and motoring offences may be of more concern to the Cabinet member for Environment, rather than the Cabinet Member for Adult Social Care & Housing.

The imposition of a caution is not a matter of public record. Sanctions against a member for accepting a caution run the risk of making a private matter public.

If consideration is to be given to including cautions, the term police caution should be avoided, unless it is proposed to limit it to cautions imposed by the Police. The term police caution is not a term with which the Council is familiar. It recognises simple cautions and conditional cautions, in accordance with Home Office Circular 30/2005, the Cautioning of Adult Offenders. It should also be noted that other enforcement bodies use cautions. For example, the Council uses them for Housing Benefit offences, which action is compatible with DWP guidance.

The proposed “official capacity” definition appears clumsy.

Offending abroad

It seems right that a conviction abroad should only be considered where the same behaviour would amount to a criminal offence in the UK.

Conduct regime

It is proposed that investigations into allegations of misconduct should automatically be put on hold where the allegation involves a criminal activity which at the time the allegation is made is being investigated by the police or prosecuted through the courts. This approach is inconsistent with current Standards Board guidance on deferring investigations. That proposes that investigation should normally be deferred where there are other proceedings pending, but where the investigation will not prejudice the police investigation or court case, the investigation can proceed.

In cases involving a member’s honesty, integrity or conduct which has a bearing on the discharge of their official duties, a precautionary suspension, akin to that used for employees could be considered.

Proposed revision to the members’ code

The proposed revisions to the Code are pedantic, but otherwise unobjectionable. Paragraph 12 (2) already applies to Rottingdean Parish Council. While the Code is being reviewed, consideration could be given to revising (upwards) the £25 limit. The current level means that the most of the functions attended by the Mayor have to be registered.

Time limit for giving undertaking to observe new code

It is proposed that a member would have two months for the adoption of the new code to give an undertaking to abide by it. Two months has proved adequate in the past, and there is no obvious reason why it would not in the future.

New general principle

A duty to uphold the law is not a principle, but rather a requirement.

Mandatory code for employees.

This is to be welcomed as it establishes a stronger national local government professional identity and gives the public confidence that there is a minimum standard of conduct for local members and public servants.

All employees?

The code should apply to all local public servants regardless of professional codes. Professional codes by their nature are likely to speak to a certain area of conduct. A basic base employee code should apply to all particularly in regard to honesty integrity, relationships with politicians and dignity and respect at work. There may also be an advantage in the strengthening of equality and diversity elements of the employees' code as they may not have appropriate emphasis in other professional codes.

Core values

There is insufficient emphasis on treating colleagues, customers and members with dignity and respect. Does the code not need to mirror that of members in having a section on conduct when not officially in role?

Qualifying employees

The model should be based on delegation, covering those already politically restricted but also some more junior officers who have visible and important roles, for example those closely supporting democratic structures or as the most senior representative of the council in a community setting.

Registration of interests

Employee interests should be publicly registered.

4. CONSULTATION

- 4.1 The Assistant Director, Head of Human Resources has been consulted. His views have been incorporated into the report.

5. FINANCIAL & OTHER IMPLICATIONS:

5.1 Financial Implications:

There are none.

Finance Officer Consulted:

Date:

5.2 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, after consulting local authority representatives, the Audit Commission and Commission for Local Administration in England.

Lawyer Consulted: Liz Woodley

Date: 27 October 2008

5.3 Equalities Implications:

There are none.

5.4 Sustainability Implications:

There are none.

5.5 Crime & Disorder Implications:

There are none.

5.6 Risk and Opportunity Management Implications:

There are none.

5.7 Corporate / Citywide Implications:

There are none.

SUPPORTING DOCUMENTATION

Appendices:

1. Communities and Local Government Paper. "Communities in control: Real people, real power Codes of Conduct for local authority members and employees"

Documents In Members' Rooms

1. None
- 2.

Background Documents

1. None
- 2.