

STANDARDS COMMITTEE

20th February 2007

PRESENT:-

District Council Members

Councillors Bale and Mrs. Mead.

Parish Members

Mrs. C. Barker and Mr. R. Buxton.

Independent Members

Mr. D.R. Williams (Chair), Mr. P. J. Dawn (Vice-Chair) and Mr. T. Thompson .

APOLOGY

An apology for absence from the Meeting was received from District Councillor Lauro.

SC/11. **MINUTES**

The Open Minutes of the Meeting held on 4th July 2006 were taken as read, approved as a true record and signed by the Chair.

SC/12. **FIFTH ANNUAL ASSEMBLY OF STANDARDS COMMITTEES: 16TH AND 17TH OCTOBER 2006**

The Committee considered a report on the details of the conference materials from the Fifth Annual Assembly of Standards Committees held at the International Convention Centre, Birmingham on 16th and 17th October 2006. The Assembly was attended by Mr. D. Williams (Chair of the Standards Committee), Ms. A. McCaskie (Monitoring Officer) and Mr. N. Betteridge (Democratic Services Manager). A copy of the final programme for the Assembly was attached at Annexe 'A' of the report, and the details of the conference materials from the various sessions were attached at Annexe 'B' of the report.

The Chair of the Committee gave a brief verbal report to the Meeting on the Assembly, advising that this had not been as beneficial as previous events as the revisions proposed to the Model Code of Conduct for Local Authority Members had not yet been published.

RESOLVED:-

That the content of the report on the Fifth Annual Assembly of Standards Committees held on 16th and 17th October 2006 be noted.

SC/13. **CONSULTATION PAPER ON AMENDMENTS TO THE MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS**

The Committee considered a report on a consultation paper issued by the Department of Communities and Local Government (DCLG) on amendments proposed to the Model Code of Conduct for Local Authority Members. The DCLG had published a consultation paper seeking views on the draft of a proposed new Model Code of Conduct for Local Authority Members on 22nd January 2007. The closing date for the receipt of responses was 9th March 2007.

The Government's stated intention was "to put in place a clearer, simpler and more proportionate code of conduct for Members of Local Authorities which includes changes to the rules on personal and prejudicial interests".

The following documents were attached to the report:-

- A copy of the consultation paper (Annexe 'A')
- The draft model code of conduct Regulations (Annexe 'B')
- Summary of proposed main changes (Annexe 'C')
- The specific questions posed by the consultation paper together with suggested responses (Annexe 'D')

The draft regulations involved the production of a single mandatory model code with the provision in the regulations for non-relevant provisions for different authorities to be non-mandatory. It would therefore be necessary for each authority to adjust the model code by deleting the non-mandatory elements relating to it prior to adoption, rather than simply adopting the entire code.

The scope of the new code of conduct proposed was broadly unchanged. However, the revised code sought to:-

- Reflect the recommendations of the Standards Board for England following their review of the current code.
- Reflect Adjudication Panel for England and High Court decisions on interpretation (discrimination, private capacity, disclosure in public interest).
- Modify the effect of the Richardson decision (Richardson & Orme v North Yorkshire County Council) to allow a Member to make representations whilst having a prejudicial interest.
- Improve the structure and drafting of the code (Part 2 of the draft revised code was reconstructed firstly to define personal interests and then to deal with disclosure, avoiding the difficult cross referencing in the current code. The wording of some interests was adjusted to accommodate this structural change).
- Be gender neutral.
- Improve some definitions.

RECOMMENDATIONS TO COUNCIL:-

- (1) **That the responses to the consultation paper issued by the Department of Communities and Local Government on amendments to the Model Code of Conduct for Local Authority Members, as detailed below be approved:-**

Question 1

Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?

Recommended Response

The proposed amendment incorporates the requirements of Article 10(1) of the European Convention on Human Rights (freedom of expression). In practice it will be extremely difficult for a Member to weigh up the balance of competing interests of preserving confidentiality on the one hand and the restricted number of cases where it would be defensible to disclose that information on the other, e.g. to make known the occurrence of a criminal offence. It would be difficult to determine when disclosure will be “reasonable and in the public interest”, given that this is the test which local authorities are themselves applying when deciding whether or not information should be within the public domain or should remain exempt.

As currently drafted, the code does not make it clear whether it is a two part test, namely that the disclosure must be reasonable and in the public interest and made in good faith, or whether there is a defence if either of these tests can be satisfied.

The paragraph also requires clarification so that the proscription applies solely to those areas where the Member received the information in his or her official capacity and not as a private individual or in any other capacity.

Question 2

Subject to powers being available to us to refer in the code to actions by Members in their private capacity beyond actions which are directly relevant to the office of the Member, is the proposed text which limits the proscription of activities in a Member’s private capacity to those activities which have already been found to be unlawful by the courts, appropriate?

Recommended Response

This suggests that the code only applies to activities in a Member’s private capacity, which have already been found to be unlawful by the courts. However, the reading of paragraph 4 of the Schedule may be wider than this and, whilst it may include criminal offences, might also include other conduct, which constitutes disrepute.

There is a range of conduct which could arguably be said to bring a Member’s office into disrepute which falls short of conduct capable of founding a criminal conviction, e.g. anti-social behaviour. However, by referring to a criminal offence in paragraph 4, it suggests that there is a high threshold of behaviour which could be countenanced before action under this paragraph of the code would be contemplated.

Note: The Livingstone Case has currently limited the scope of the code of conduct in a Member's private capacity only to conduct where it can be established that there is a direct link with the Member's office. However, there is a provision contained in the Local Government and Public Involvement in Health Bill, which if enacted, will make it clear that behaviour in a private capacity can be included within the remit of the code.

It is this Council's view that Members' actions in their private capacity should not be limited to conduct resulting in a criminal conviction and may include conduct falling short of this high threshold.

Question 3

Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, e.g. via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?

Recommended Response

In practice, the Publicity Code is a useful tool which assists Local Authorities and Members in addressing sensitive issues at sensitive times, e.g. in the run up to elections. Whilst the provisions of the publicity code need to be reviewed, such a review could consider how best to assist authorities currently not subject to its remit.

Question 4

Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?

Recommended Response

The provisions regarding gifts and hospitality seem excessive. In practice, most authorities maintain a separate gifts and hospitality register, which is not open to public inspection. To translate gifts and hospitality of a value of £25 into interests requiring registration and declaration seems unnecessarily bureaucratic and burdensome, particularly when a bunch of flowers, which are arguably a token of appreciation rather than an imputation of ulterior motive, can cost £25 nowadays.

Furthermore, the requirement of disclosure of such an interest for any period of time after registration seems excessive (not least for Members in remembering that they had received such gifts or hospitality). The £25 should be increased to £50 and the need to declare such interests should be removed. However, the gifts and hospitality register should be open to public inspection.

There should also be clarification in respect of gifts and hospitality received by the Chair of the Council in his/her capacity as Civic

Head. Most Local Authorities adopt a very sensible approach in that such gifts and hospitality are not declared under the code where they are received as a direct consequence of the office, but it would be preferable if this could be clarified beyond doubt, if not within the code itself, then by express guidance from the Standards Board. In any event most gifts (beyond flowers and chocolates) received by the Chair are invariably regarded as gifts to the Council, rather than to the individual concerned.

Question 5

Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a Member, including family, friends, business associates and personal acquaintances?

Recommended Response

There has been difficulty in the existing code in Members determining who constitutes a friend. This will be compounded by the new requirement to consider not only friendship but also close personal associations. This will be particularly difficult in the context of small parishes where most people in the community know each other. Very clear guidance will be required from the Standards Board on this, ideally with a clear test which Members will find easy to apply.

It is always going to be difficult to describe adequately the concept that it is the close association between a Member and other people involved in an issue under debate which will give rise to the perception by onlookers of inappropriate dealing. In that respect it is not clear what is added by the word ‘personal’ in the phrase ‘close personal association’.

Question 6

Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?

Recommended Response

Note: Three new items have been added. These seem sensible and are to be welcomed.

Exemptions could be extended usefully in at least two respects:-

- (1) To expand paragraph 9 (2)(b)(i) and provide that a Member who is a tenant, lessee or licensee generally would not have a prejudicial interest, save where the debate specifically relates to his or her property. This would cover e.g. allotments and garages and grazing licences which can be problematic in some authorities.**
- (2) To extend paragraph 9(2)(b)(vi) in respect of bestowing the title of Freeman not only on a Member, but on a spouse, friend or close associate. In practice, the candidates for such an award are likely, by virtue of the service they have**

provided to the community, to have come into close association with Members.

Question 7

Is the proposed text relaxing the rules to allow increased representation at meetings, including where Members attend to make representations, answer questions, or give evidence, appropriate?

Recommended Response

It is illogical to make the intended exemption in the way proposed. Merely because the Member is answering questions or making representations cannot logically affect whether or not he or she has a prejudicial interest within the definition of that phrase in paragraph 9(i). What is needed is a recognition that, despite the prejudicial interest, the Member is not disbarred from answering questions and making representations. In that respect the Member's position is different from the instances cited in paragraph 9(2)(a) and (b). So, drafting that says "notwithstanding their prejudicial interest, a Member may attend a meeting to make representation, answer questions and give evidence" would be more helpful.

In practical terms, the provision is likely to give rise to the need for very clear procedures to be adopted by the meeting to ensure that the Member does withdraw from the room at a particular point. It would be useful to clarify that withdrawal should have taken place prior to a decision being reached. It is not clear whether the Member may stay for the debate.

Question 8

Is there a better, more user-friendly way of ensuring the text is gender-neutral, for example, would consultees consider that amending the wording to say 'you' instead of 'he or she' or 'him or her' would result in a clearer and more accessible code for Members?

Recommended Response

The draft code is written in language that is intended to be user friendly. It is clearer and more understandable, although the lack of definitions creates ambiguity in many places. Achieving gender neutral language is ideal, but the proposal to refer to the second person ("you") is likely to cause ambiguity. The Authority recommends that 'he/she' and 'his/her' should be used.

(2) That the following issues relating to the draft Code of Conduct also be raised by the Council:-

- **Concern relating to the short consultation period of six weeks, which is particularly relevant to Parish Councils who only meet on a monthly basis.**
- **Concern relating to the short timetable for the adoption of any amended Code of Conduct by Annual Council Meetings in May 2007.**
- **The Code of Conduct should make reference to the concept of common law bias as this would assist Members and dispel the**

notion held by some that the Code is all inclusive, governing the ability to participate in meetings and decision making.

- Public service interests should be dealt with in a separate paragraph.
- The inclusion of a preface of the ten principles of Local Government Conduct would be preferable rather than having separate definitions throughout the Code.
- The new phrases referred to in the draft Code listed below require definition:-
 - “Close personal association”
 - “Family”
 - “Lobbying Organisation”
 - “Of a financial nature”
 - “Philanthropic Organisation”
 - “Relates to”
- All Declarations of Interest should be disclosed at the start of a meeting. The dispensation proposed at paragraph 8(2) of the draft Code is of concern as it would create practical difficulties for the good administration of meetings and is at odds with the Government’s intention “to put in place a clearer, simpler and more proportionate Code of Conduct for Members of Local Authorities”.

SC/14. **DATE OF NEXT MEETING**

RESOLVED:-

That the next Meeting of the Standards Committee be held on Monday, 19th March 2007 at 5.30 p.m.

D. R. WILLIAMS

CHAIR

The Meeting terminated at 7.20 p.m.