

WEST MIDLANDS FIRE AND RESCUE AUTHORITY

STANDARDS COMMITTEE

5th MARCH 2007

1. CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS

Report of the Monitoring Officer

RECOMMENDED

- (1) To consider the report and Consultation on Amendments to the Model Code of Conduct for Local Authority Members and suggest comments, if any, that should be made to the Department for Communities and Local Government.
- (2) To authorise the Monitoring Officer to submit the final response, if any, on behalf of the Standards Committee and the authority.
- (3) To authorise the Monitoring Officer and the Clerk to take appropriate action to seek the formal adoption of the revised Code of Conduct for members as required and to arrange training for members on the same.

2. PURPOSE OF REPORT

- 2.1 It has been apparent for some time that the Code of Conduct for Members was being reviewed and that changes to it were likely to be made.
- 2.2 The Government has now published Consultation on Amendments to the Model Code of Conduct for Local Authority Members. Responses are required by 9th March 2007.
- 2.3 The revisions being proposed relate, inter alia, to:

1. Equality.
2. Bullying.
3. Disclosure of confidential information.
4. Disrepute and behaviour outside official duties.
5. Misuse of resources and local authority publicity.
6. Duty to report breaches of the Code.
7. Gifts and hospitality.
8. Personal and prejudicial interests.
9. Public service interests.
10. Sensitive information.

- 2.4 Members are requested to consider what response they wish to make to the Consultation and to authorise officers to take the necessary steps to have the new Code adopted when required and to arrange for appropriate training for members.

3. **BACKGROUND**

- 3.1 The Standards Board for England carried out consultation in 2005 on amending the Code and subsequently made recommendations on this to the Government. The Government's response was set out in the Discussion Paper "Conduct in English Local Government : The Future".
- 3.2 In October 2006 the Local Government White Paper, "Strong and Prosperous Communities" set out the Government's broad proposals to make the Code more effective and proportionate. The White Paper also signalled a move to a more locally based decision-making framework for the investigation and determination of all but the most serious of misconduct allegations. The Standards Board would become a strategic regulator promoting and ensuring consistency of standards. The Local Government and Public Involvement in Health Bill includes the changes intended and is progressing through Parliament.
- 3.3 The Consultation includes explanatory commentary on the proposed amendments, the revised draft Code and some specific questions. It is attached at Appendix 1.

Comments and views are invited on the detailed proposals and the proposed model Code as well as responses to the specific questions.

The responses have to be made by 9th March 2007.

4. **AMENDMENTS PROPOSED**

- 4.1 The current Code requires a member to promote equality by not discriminating unlawfully against any person although Adjudication Panels have no jurisdiction in this regard.

The revised Code would proscribe members from doing anything that would seriously prejudice their authority's statutory duties in regard to equality.

- 4.2 Currently members are required to treat others with respect and not bring their office or authority into disrepute.

The revised Code would also proscribe bullying.

- 4.3 Members should not disclose information given to them in confidence or which the member believes to be of a confidential nature.

The revised Code would allow members to disclose information where such disclosure is in the public interest. The disclosure would need to be in good faith and reasonable and not breach any reasonable requirements of the authority.

Specific question in Consultation : Q1. 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?

- 4.4 The Local Government and Public Involvement in Health Bill, when enacted, will allow a member's behaviour in a private capacity to be included within the Code.

Only behaviour for which the member has been convicted by a court would be caught by the revised Code.

Specific Question in Consultation : Q2. 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?

- 4.5 Currently members should not use resources improperly for political purposes.

It is proposed that members should also have regard to the Government's Code of Recommended Practice on Local Authority publicity. This provision is not mandatory for fire and rescue authorities.

Specific question in Consultation : Q3. 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, eg 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?

- 4.6 Members are required, if they become aware of another member's breach of the Code, to make an allegation to the Standards Board of that breach.

It is proposed that this duty should be deleted from the Code. In addition there will be a proscription on the intimidation of complainants and witnesses.

- 4.7 The Code currently provides that any gift or hospitality over £25 must be notified to the monitoring officer.

It is proposed that such gifts and hospitality should be included in the register of interests as a personal interest. There would also be a requirement to disclose such personal interests for a period of five years following the receipt of the gift or hospitality.

Specific question in Consultation : Q4. 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?

- 4.8 It is made clear that a member has a personal interest in any matter where it relates to his or her membership of or position of general

control or management in a political party.

- 4.9 The current Code provides that a member must regard himself or herself as having a personal interest in a matter if a decision on it affects to a greater extent than other council tax payers, rate payers or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend.

It is proposed to add reference to any person with whom the member has a close personal association.

It is proposed to delete the definitions of family or friend in the Code.

Specific question in Consultation : Q5. 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?

- 4.10 The current Code provides that members have a personal interest if they would be affected by a matter to a greater extent than other Council tax payers, rate payers or inhabitants of the authority's area.

The proposals suggest replacing this with a requirement that the personal interest arises only where the interest might reasonably be regarded as affecting the member to a greater extent than the majority of other council tax payers, rate payers or inhabitants of the ward which is affected by the particular matter.

- 4.11 Technically a member breaches the Code in respect of the personal interests of a relative even if he or she is unaware of any interest held by a relative.

The amendment would mean that the rules on the disclosure of interests at a meeting would apply only if the member is aware or ought reasonably to be aware of the interest held by the family member, friend or person with a close personal association.

- 4.12 Members currently must disclose a personal interest at the commencement of the meeting or when the interest becomes apparent.

A public service interest is proposed which arises where a member is also a member of another public body. Such interests have to be entered in the register of interests but only have to be declared at meetings if and when the member speaks on a relevant issue.

- 4.13 The revisions seek to simplify and amend the list of exemptions where members should not regard themselves as having a prejudicial interest.

The list of exemptions from prejudicial interests is expanded to include issue of indemnities, the setting of council tax and consideration of whether or not a member should become a freeman of the authority.

It is also proposed to amend the Local Authorities (Code of Conduct) (Local Determination) Regulations to allow a member to attend a hearing of a standards committee into his or her conduct in order to be able to defend himself or herself.

Specific question in Consultation : Q6. 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?

- 4.14 The current Code does not allow a member to scrutinise a decision of a committee, sub-committee or joint committee of which he may also be a member.

The revised Code will provide that members, including former members of the executive, are excluded from overview and scrutiny committees where they are scrutinising decisions which they were involved in making. This provision is not mandatory for fire and rescue authorities.

- 4.15 The revised Code seeks to provide a clearer prejudicial interest test to apply for public service interests and where members attend to make representations.

Where a public service interest is not prejudicial, it will not need to be declared at the meeting provided that it is in the register of interests. If a public service interest is prejudicial, it will need to be declared, and the member concerned will not be able to vote on the matter. Members with prejudicial public service interests will be able to remain in the room and participate in debate, but be required to

withdraw before any vote is actually taken. A public service interest would only be considered prejudicial where: the matter relates to the financial affairs of the body concerned, or where the matter relates to the determining of any approval, consent, licence or permission (eg in respect of planning and licensing) in relation to the body.

Any member will not have a prejudicial interest where they attend a meeting to make representations, answer questions or give evidence, provided the committee agrees that the member may do so. After answering questions or giving evidence the member must withdraw from the meeting room.

Specific question in Consultation : Q7. 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?

- 4.16 The current Code requires members to register all of their personal interests.

The revised Code will allow for sensitive information in respect of private interests not to be included on the register of interests where revealing it is likely to lead to the member of those he or she lives with being subject to violence or intimidation.

- 4.17 It is proposed that the revised Code will ensure gender neutrality of language.

Specific question in Consultation : Q8. 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?

5. **ADDITIONAL CONSIDERATIONS**

- 5.1 Whilst bullying is addressed in the revisions proposed, harassment and victimisation are not.
- 5.2 The ten General Principles of public life are not included in the proposed model. These are:

Selflessness
Honesty and integrity
Objectivity
Accountability
Openness
Personal judgment
Respect for others
Duty to uphold the law
Stewardship
Leadership

It would be helpful to clarify in the Code their status and standing.

- 5.3 The amendments do not address rules of natural justice, pre-determination, bias or pre-disposition. These apply to members in addition to the Code and as a minimum a cross-reference may be useful.

6. **EQUALITY IMPACT ASSESSMENT**

The report does not raise issues which require a full Equality Impact Assessment to be completed.

7. **LEGAL IMPLICATIONS**

- 7.1 The Local Government Act 2000 provided a statutory basis for the ethical framework for local government. As part of this the Secretary of State was enabled to introduce a model Code of Conduct and most local authorities discharged their duty to adopt a Code of Conduct by adopting the model with little or no modification. Amendments are now being proposed to the model.
- 7.2 The proposed revisions to the Code are intended to clarify and strengthen the rules in certain areas whilst further allowing members to carry out their roles and responsibilities without undue restriction.
- 7.3 A Statutory Instrument will bring the revised Code of Conduct for members into force. It will have to be adopted by full Council. All members will be subject to the revised Code.

8. FINANCIAL IMPLICATIONS

- 8.1 It is not considered that the revised Code of Conduct will in itself have any significant strategic resource implications although resources may have to be redirected from existing budgets to train members.
- 8.2 The Local Government and Public Involvement in Health Bill contains provisions which require local Standards Committees to receive allegations and for most investigations to be carried out at the local level and to be locally determined. Such changes will impact on the work of the Monitoring Officer and Deputy Monitoring Officers, Governance Services and the Standards Committee. If necessary resources will have to be adjusted in due course.

Background Papers

Consultation on Amendments to the Model Code of Conduct for Local Authority Members – Department for Communities and Local Government – January 2007.

**N SHARMA
MONITORING OFFICER**