



Report to Standards Committee

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Subject: Revised Model Code of Conduct for Local Authority Members

.Background

The Department of Communities and Local Government (DCLG) published a consultation paper seeking views on the draft of a proposed new model code of conduct for local authority members on 22 January 2007. The closing date for responses is 9 March.

The Government's stated intention is "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".

Although the Standards Board for England consulted on the principles for a revised code of conduct for Members, and the Government issued a discussion paper on the revision in 2005, neither those papers contained a draft revised text for the code and the new draft text is not always in accordance with the previous consultations. However, on the basis that these are matters on which there has been previous consultation, the period for responses to the consultation has been reduced to just 6 weeks and it is clear that the Government intends to bring the amended code into force in time for Local Authorities to adopt it at their annual meetings in early May 2007. The draft revised code appears to have been drafted to avoid the need for further revision when the provisions of the Local Government Public and Involvement in Health Bill are applied to extend the application of the code to conduct in Members' private lives.

Details of the Proposals

A copy of the consultation paper is attached at **Appendix 1**.

The draft Regulations involve the production of a single mandatory model code (rather than the 4 current models) with provision in the Regulations [Paragraph 2(3) to (6)] for non-relevant provisions for different authorities to be non-mandatory. It will therefore be necessary for each authority to adjust the model by deleting the non-mandatory elements relating to it, prior to adoption, rather than simply adopting the entire code.

The scope of the proposed new code of conduct is broadly unchanged. However, the draft revised code seeks to:

- Reflect the recommendations of the SBE following their review of the current code;
- Reflect APE and High Court decisions on interpretation (discrimination, private capacity, disclosure in the public interest);
- Modify the effect of the Richardson decision to allow a Member to make representations whilst having a prejudicial interest;
- Improve the structure and drafting of the code;
- Improve some definitions.

The draft revised code provides a number of relaxations from the requirements of the current code. In particular it:

- Removes the obligation to report allegations of failure to comply with the code (current paragraph 7);
- Limits the obligation to disclose a personal interest of a family member, friend or person having close personal association to those that the Member is aware of, or ought reasonably to be aware of;
- Creates a new category of public service interest as to membership of another relevant authority, public authority or body the Member is appointed to by the authority.
- Provides for a Member, otherwise having a prejudicial interest, to attend a meeting for the purpose of making representations, answering questions, or giving evidence, provided the meeting agrees and subject to the Member withdrawing after so doing.

The draft revised code also imposes additional obligations on Members such as:

- Not to bully any person - 2(b);
- Not to intimidate a person involving in proceedings under the code - 2(c);
- Extends the meaning of political purposes in the use of the authority's resources provision to specifically include "party political purposes".
- Extends the provision on use of the authority's resources to include having regard to the Local Authority Code of Publicity - 5(b)(iii).
- An extended obligation to have regard to the advice of the Monitoring Officer and the Chief Finance Officer - 6(a).

The opportunity to bring the application of the code and the law of bias closer together has not been taken in the draft. It would be helpful if there was an express

reference in paragraph 9 of the code under the heading “prejudicial interests” to the fact that a Member should not participate in decision-making, notwithstanding that a prejudicial interest does not arise, if such participation is likely to give rise to a real possibility of bias. Such a provision would provide a direct link between the common law test of bias and the member code, reinforcing the principles which need to be applied by Members in determining whether to participate in decision making.

In practical terms there is generally a good understanding by members of the code and a familiarity with its provisions. It is however regarded by some as an all-inclusive code governing the ability to participate in meetings and decision-making. Clearly, this is not the case since the law of bias also is a significant consideration in this area. Whilst the code cannot be expected necessarily to prescribe or proscribe in the area of bias. It would be useful for the code explicitly to recognise the existence of the bias provisions.

The effect of the dispensation in paragraph 8(2) generally is a concern. Members are now accustomed to disclosing interests at the beginning of the meeting. There does not seem to be any value gained by changing from disclosure at the beginning whether the Member speaks or not. Curiously, in the new draft, if the Member does not speak, there is no requirement to declare the public service interest. It may seem very odd to a member of the public for one Member to disclose an interest and another not (because she/he did not speak) when both take part in the decision by voting.

It is **recommended** that members consider the consultation paper and what response it will make.