

## **APPENDIX 2**

### **CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES**

#### **CONSULTATION DOCUMENT**

#### **DRAFT RESPONSE**

#### **Code of Conduct for Local Authority Members**

##### **Question 1**

*Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?*

This is a fundamental question that members need to discuss and agree on a response.

##### **Question 2**

*Do you agree with this definition of "criminal offence" for the purposes of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.*

It is considered that the definition of "criminal offence" is workable. If the Code is indeed to apply to criminal offences committed by members in their non-official capacity then it probably makes sense to exclude fixed penalty offences. If not then even a minor traffic infringement could result in a member being in breach of the Code of Conduct.

The question of taking into account cautions is a more difficult issue. If someone accepts a caution then they are admitting they have committed a criminal offence—hence from a logical point of view it is difficult to see why cautions should be treated any differently from convictions in court.

##### **Question 3**

*Do you agree with this definition of "official capacity" for the purposes of the members' code? If not, what other definition would you support? Please give details.*

The definition given is: "...as being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority"

It is considered that this definition is sufficiently wide for the purposes of the Code. If a member is representing that he is acting in his official capacity then it is right that the Code should apply if it subsequently becomes apparent that he was merely pursuing his own personal interests – he would be abusing his position in this regard.

#### **Question 4**

*Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?*

If a member's conduct whilst acting in a personal capacity would not be illegal under the laws of this land then some would maintain that such conduct should not be covered by a Code of Conduct.

However, Members need to consider this question carefully.

#### **Question 5**

*Do you agree that an ethical investigation should not proceed until the criminal process has been completed?*

Agreed. There is a danger that to continue with an ethical investigation in these circumstances could have a prejudicial effect on the criminal process.

#### **Question 6**

*Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?*

The suggested amendments here are designed to improve clarity. Essentially they constitute a tidying up exercise. They do not appear to be controversial in any way and therefore supported.

There are no other obvious drafting amendments that would be required.

#### **Question 7**

*Are there any aspects of conduct currently included in the members' code that are not required? If so please could you specify which aspects and the reasons why you hold this view?*

It is important that members should debate this issue.

From an officer point of view it is difficult to see what areas of conduct could be deleted from the Code. There is nothing obviously superfluous.

### **Question 8**

*Are there any aspects of conduct in a member's official capacity not specified in the Members' code that should be included? Please give details?*

Again this is an important question for members to consider.

Ostensibly the Code has worked well. From an officer perspective there are no obvious gaps in its provisions. It is important that the right balance is struck – one would not want to have a code that was too onerous.

### **Question 9**

*Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?*

Agreed. The time scale is reasonable.

### **Question 10**

*Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?*

The response to this in part will be determined by the response of Members to question 1.

The general principle referred to is: "Members should not engage in conduct which constitutes a criminal offence"

Subject to what members decide in relation to question 1, it is difficult to object to this general principle.

### **Question 11**

*Do you agree with this broad definition of "criminal offence" for the purposes of the General Principles Order? Or do you consider that "criminal offence" should be defined differently?*

The Government proposes that criminal conviction be defined as any conduct that has resulted in a criminal conviction. It is unclear whether this includes convictions for

fixed penalty offences. It is important that the definition here should be consistent with the definition of criminal offence elsewhere in the Code (see the proposed response to question 2).

### **Question 12**

*Do you agree with this definition of “official capacity” for the purpose of the General principles Order?*

Please see the proposed response to Question 3.

It is considered that the definition is workable for the purposes of the Code

### **Model code of Conduct for local authority employees**

### **Question 13**

*Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees’ terms and conditions of employment, is needed?*

This is another fundamental question that members need to discuss.

There has been discussion at government level on this issue over a number of issues.

South Ribble Borough Council has its own voluntary Code of Conduct which all employees sign up to.

### **Question 14**

*Should we apply the employees’ code to fire-fighters, teachers, community support officers, and solicitors?*

Yes. If there is to be an employee Code of Conduct then it should apply to all employees. It would be perceived to be unfair if certain professions were exempt from its requirements.

### **Question 15**

*Are there any other categories of employee in respect of whom it is not necessary to apply the code?*

Please see the proposed response to question 14. If there is to be a Code then all employees should be subject to the Code without exception.

### **Question 16**

*Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?*

From an officer perspective it is considered that the employees' Code does indeed reflect the necessary core values that should be enshrined.

The core values that have been identified are:

Accountability

Political neutrality

Mutual respect (relations with members, the public and other employees)

Personal interests – must not interfere with professional duty

Whistle blowing

Treatment of information – respecting confidentiality

Appointment of staff – only on basis of merit

Complying with requirements of Monitoring Officer in relation to investigations.

It is considered that there are no obvious omissions from the list. However, this is something that members should give consideration to. Are there any other core values that members believe should be included? Is there anything that should be omitted?

### **Question 17**

*Should the selection of “qualifying employees” be made on the basis of a “political restriction” style model or should qualifying employees be selected using the delegation model?*

The fundamental issue that members need to consider is whether it is right that there should be a two tier approach to the Code of Conduct for employees.

Clearly it can be argued that more should be expected of officers in certain senior positions. On the other hand members may feel that a uniform approach to all employees may have the benefit of greater clarity.

From an officer perspective it does not appear to be an issue of huge significance which definition of qualifying employees one adopts (if it is accepted that the two tier

approach is the right one). Possibly the political restriction model is preferable as it is very clear as to which employees fall within this definition.

### **Question 18**

*Should the code contain a requirement for qualifying employees to publicly register any interests?*

Agreed. It is difficult to argue against such a requirement.

### **Question 19**

*Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?*

Again the list does appear to be sufficient in this regard. It includes membership in a body exercising a public function, any business that an employee might own or have a share in (greater than £25,000), any contracts between the authority and any company an employee has an interest in, and any land or property in the authority's area in which the employee has a beneficial interest.

Members need to satisfy themselves that they are satisfied with this list? Are there any other interests that should be included? Is there anything that should be omitted?

### **Question 20**

*Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?*

The additional provisions that will be captured in the Code for qualifying employees are terms covering compromising the impartiality of officers of the authority, using your position improperly, considering advice and giving reasons (the qualifying employee must have regard to advice given to them about the application of the Code) and registering of personal interests.

It is considered that the combination of the core values and these additional requirements are sufficiently wide and that they do indeed capture all pertinent aspects of the members' code. Members should also be aware that all employees are of course subject to terms and conditions of employment which cover a number of relevant issues.

**Question 21**

*Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?*

It is not considered that the additional requirements are excessive. Again however Members may wish to debate this issue.

**Question 22**

*Should the employees' code extend to employees of parish councils?*

This is a question for Parish Councils to respond to.