

REPORT TO	DATE OF MEETING
STANDARDS COMMITTEE	17 DECEMBER 2008

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SUBJECT	PORTFOLIO	AUTHOR	ITEM
CONSULTATION ON “CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES”	NOT APPLICABLE	DAVID WHELAN	

SUMMARY AND LINK TO CORPORATE PRIORITIES

The Government has issued a consultation document which proposes amendments to the model Code of Conduct for members and a mandatory Code of Conduct for employees.

The report enables the Committee to respond to the consultation.

It is considered that the issues raised by the consultation document will impact on a number of the Corporate priorities – in particular “Efficient, effective and exceptional Council.”

RECOMMENDATION

That Standards Committee agree a response to the consultation document.

DETAILS AND REASONING

Background

In October 2008 the Government published a consultation paper proposing amendments to the existing model Code of Conduct for Members and a mandatory Code of Conduct for Employees.

A copy of the consultation paper is attached at Appendix 1 to this report.

Members’ Code of Conduct

The current Members’ Code is derived from the Local Authorities (Model Code of Conduct) Order 2007 which applies to members of all relevant authorities in England. The Government considers that this existing Code has operated well but it has been in force for over a year and they consider that it is now appropriate to review the Code.

The Government proposes that the existing Code is restructured by revoking the existing Order and making a new one. The Government proposes that the new Members’ code will be differently formatted by dividing it into two sections: the first dealing with Members’ conduct when acting in an official capacity and reflecting what is in the current code, and the second dealing with Members’ conduct in their non-official capacity.

Members should note that it is proposed that the new Members' Code should, in the section covering the conduct of members in their non-official capacity, contain the following provision prohibiting particular conduct where that conduct would constitute a criminal offence: "Members must not bring their office or authority into disrepute by conduct which is a criminal offence"

The Government proposes for the purposes of the Members' code that "criminal offence" be defined as any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction. Fixed penalty offences that would not be relevant for these purposes would include such matters as minor traffic offences as well as certain environmental offences such as dog fouling.

It is proposed that for the purposes of the Members' code, "official capacity" be defined 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.

The Government's proposals are that the only conduct in a member's non-official capacity which will be covered by the Code is conduct which constitutes a criminal offence.

It is further proposed that where the allegation against a Member involves a criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, the Standards Committee should cease their investigation process until the criminal process has been completed.

In addition to the above there are further tidying up amendments suggested to the existing wording of the Code.

Members are invited to consider the Council's responses to Questions numbered 1 – 12 in Annex A of the Consultation paper.

At Appendix 2 to this report Committee will see draft responses to these questions which Members may find of assistance in agreeing a response.

Employees' Code of Conduct

The Council has had a voluntary Code of Conduct for all employees for many years which is part of the Constitution.

The Government has been proposing a mandatory Code of conduct for employees for many years. A proposal has now been published.

The Government's thinking is that a Code of Conduct for local government employees should provide an authority with an effective ethical framework within which to work and which should give local people confidence that an authority's employees are working on their behalf in an appropriate manner. The fundamental question that Members have to address is whether they 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

The Government is proposing that there should be core values which should apply to all employees. Such core values would deal with the following issues:- accountability, political neutrality, relations with members, the public and other employees('mutual respect'), equality, stewardship, personal interests, whistle blowing, treatment of information, appointment of staff, and complying with any requirements of a Monitoring Officer whilst carrying out an investigation.

In addition it is proposed that certain employees (“qualifying employees”) should also have to comply with some additional requirements. There are two proposed alternatives for selecting those “qualifying employees” to which, in addition to the core values of the employees’ code, further requirements should apply.

The first proposed approach is based on those posts which are classified as “politically restricted” posts. Certain posts are considered senior or influential enough to warrant controls placed on the activities of post holders. In South Ribble all Corporate Director and Heads of Service posts are politically restricted. Also a number of manager posts are also politically restricted as well as a small number of additional posts.

The second proposed approach to selecting qualifying employees is the delegation model, which would see qualifying employees being selected on the basis that they perform functions delegated to them by elected members.

Members are asked to consider which of the proposed alternative models they consider to be more appropriate for selecting qualifying employees.

Additional requirements will be imposed on qualifying employees in relation to a number of issues. These include requirements covering compromising the impartiality of officers of the authority, using their position improperly, considering advice provided to them and giving reasons and personal interests.

In terms of partnership working it will be a matter for local authorities themselves, when deciding contracts, if and how the employees’ Code of Conduct will apply to partners and their employees.

The Government is seeking the views of parish councils on whether the employees’ code of conduct should extend to employees of parish councils.

Members are asked to consider those Questions 13 to 22 in Annex A of the Consultation paper which deal with the issue of the proposed code of conduct for employees.

Members are again referred to Appendix 2 to this report which sets out some draft responses to these questions.

Consultation

Both members and employees have been consulted in relation to these proposals.

An email was sent to all Members on the 31st of October seeking comments/observations. An email was similarly sent to all employees on the 3rd of November. Unison was also consulted on these proposals.

The response to this consultation has not been extensive.

Comments from employees have included:

- a preference that there should only be one Code of Conduct for all employees
- a concern that employees of partners and contracting employees will not automatically be subject to a Code of Conduct (we would have to require it in any contract documentation)
- an acceptance that the registering of employee interests should be necessary in the interests of transparency
- in terms of whistle blowing requirements for employees an acceptance of this provided the individual Council has some discretion in terms to how to deal with any failure to act (i.e. a junior employee may feel intimidated about reporting on a very senior officer)
- Possibly it should be up to each local authority to decide on who will be qualifying employees

Any further responses received will be reported to the meeting including any comments received from Unison.

WIDER IMPLICATIONS

In the preparation of this report, consideration has been given to the impact of its proposals in all the areas listed below, and the table shows any implications in respect of each of these.

FINANCIAL	There are no financial implications arising from this report.		
LEGAL	<p>All members will have to sign up to any amended Code of Conduct - this will be a legal requirement. Any failure to comply with any such Code could result in a complaint under the Standards regime. If any such complaint is upheld then various sanctions may be imposed on a member including suspension for a period of up to six months.</p> <p>Likewise officers will have to comply with any new Code of Conduct that is introduced for them. The requirements of any such Code will be deemed to be part of the employee's terms and conditions of employment. Any failure to comply with such a Code could result in action under disciplinary and/or capability procedures.</p>		
RISK	<p>It is imperative that the general public should have confidence in the workings of the Council.</p> <p>The amended Code of Conduct for Members and the proposed Code of Conduct for Employees are designed to reassure the public that local authorities will continue to operate within a robust ethical framework.</p> <p>It is considered that this Council is already in a strong position in this regard but we must always ensure that we do everything possible to maintain (and indeed improve) our high standards.</p>		
OTHER (see below)	Training and Development – Training and/or awareness raising sessions will be held for both Members and Officers if the Government's proposals are implemented.		
<i>Asset Management</i>	<i>Corporate Plans and Policies</i>	<i>Efficiency Savings</i>	<i>Equality, Diversity and Community Cohesion</i>
<i>Freedom of Information/ Data Protection</i>	<i>Health and Safety</i>	<i>Human Rights Act 1998</i>	<i>Implementing Electronic Government</i>
<i>Respect Agenda</i>	<i>Staffing</i>	<i>Sustainability</i>	<i>Training and Development</i>

BACKGROUND DOCUMENTS

Existing voluntary Code of Conduct for Employees