

## Consultation on Revised Model Code of Conduct

### Report of the Clerk

For further information about this report please contact Sharon Lloyd,  
Corporate Services Manager, on 01743 260210.

### 1 Purpose of Report

On 22 January Communities and Local Government published a consultation paper seeking views on a draft new Model Code of Conduct for Local Authority Members, **responses to which are required by 9 March 2007**. This report summarises the more significant changes proposed and sets out the Fire Authority's response to the consultation paper.

### 2 Recommendations

Members are asked to note the report, including the Fire Authority's response to the consultation paper, which is attached as an appendix.

### 3 Background

The Local Government White Paper 'Strong and Prosperous Communities', published in October 2006, announced the Government's intention to put in place a clearer, simpler and more proportionate Code of Conduct for Members of local authorities, which would include changes to the rules on personal and prejudicial interests. This followed its discussion paper 'Standards of Conduct in English Local Government: The Future' in December 2005, which included the Government's response to recommendations from the Standards Board for England for amendments to the Model Code of Conduct for Members.

On 22 January 2007 Communities and Local Government published a consultation paper, seeking views on a draft new Model Code of Conduct for Local Authority Members. A copy of that paper has previously been sent to all Members of the Fire Authority and to the 2 non-elected, Members of its Standards Committee.



## 4 Proposed New Model Code of Conduct

A summary of the proposed more significant changes, based on a document prepared by the Vice-Chair of the Standards Board for England, is given below.

### Consolidation

The Government is proposing to combine the current 4 individual Codes into one consolidated Code. The four Codes are:

- The Local Authorities (Model Code of Conduct) (England) Order 2001
- The Parish Councils (Model Code of Conduct) Order 2001
- The National Park and Broads Authorities (Model Code of Conduct) (England) Order 2001
- The Police Authorities (Model Code of Conduct) Order 2001

### Unlawful Discrimination

It is proposed that the reference to unlawful discrimination be deleted and replaced with a provision proscribing Members from doing anything that would seriously prejudice their authority's statutory duties in regard to equality.

### Bullying

The current Code states that a Member must treat others with respect and that a Member must not bring his or her office or authority into disrepute. It makes no specific reference, however, to bullying behaviour. It is proposed to add a specific provision to indicate that Members must not bully any person, i.e. that bullying of other Members, officers or anyone else is a breach of the Code. The Standards Board will issue guidance on the specific definition of bullying.

### Disclosure of Confidential Information

The Code currently provides that a Member should not disclose information given to them in confidence or which the Member believes to be of a confidential nature. There is no explicit provision allowing Members to disclose information, if this is in the public interest. This fails to take account of Article 10(1) of the European Convention on Human Rights.

It is, therefore, proposed that a Member may disclose information of a confidential nature in the public interest, provided that the disclosure is in good faith and reasonable and that the Member has not breached any reasonable requirements of the authority in the form of protocols or procedures. The Standards Board will issue guidance on how they would expect Members to interpret this requirement.



## **Behaviour outside Official Duties**

Two paragraphs of the current Code apply to Members acting outside of their official duties:

- Conducting themselves in a manner that could be reasonably be regarded as bringing the office into disrepute; and
- Using their position as a Member to secure improperly for themselves or anyone else an advantage or disadvantage.

It is proposed that a narrower interpretation is applied and that only conduct that amounts to a criminal offence should be regarded as capable of bringing the Member's office or authority into disrepute.

Note: This provision will only be effective when the Local Government and Public Involvement in Health Bill has been enacted and Section 52 of the Local Government Act 2000 has been amended.

## **Reporting Breaches of the Code and Intimidation**

It is proposed that the requirement placed on Members to report other Members' breaches of the Code, which has been perceived by some to encourage Members to make trivial allegations, is removed. At the same time it is proposed to add a provision making the intimidation, or attempted intimidation, of a complainant or witness a breach of the Code.

## **Personal Interests**

It is proposed to amend the definition of personal interest so that a Member should not be required to declare an interest in a matter, unless the interest is greater than that of the majority of the inhabitants of the ward affected by the matter. For parish councils and other authorities, the definition would apply in respect of the authority's whole area. This change is intended to provide a more locally based focus for the definition of a personal interest and should mean that a personal interest would not arise where interests are shared by a substantial number of inhabitants in the authority's area.

## **Public Service Interest**

A new category of 'public service interest' is proposed, which arises where a Member is also a member of another public body or has been nominated or appointed by the body to represent it on another organisation. In these circumstances an interest would only need to be declared if the Member speaks on a matter relating to that organisation.

## **Participation in relation to Prejudicial Interests**

The consultation paper proposes new rules to apply in circumstances where Members have a prejudicial interest. The aim is to provide for clearer and more proportionate rules to apply in respect of the participation in meetings for



those who have a public service interest, or are members of a charity or lobbying group, or are attending a meeting to make representations.

Members, who have a public service interest, would be able to participate fully in meetings, including speaking and voting on a matter, unless the matter relates to the financial affairs of the body concerned or the determination of any approval, consent or licence in relation to the body, for example a planning application.

Any Member will not be deemed to have a prejudicial interest, where they attend a meeting to make representations, answer questions or give evidence, provided that the authority or committee agrees that the Member may do so. After Members have made representations or answered questions, they must withdraw from the room.

### **Gifts and Hospitality**

Currently, the receipt of gifts and hospitality over the value of £25 must be notified in writing to the Monitoring Officer. It is proposed that, in future, information about gifts and hospitality should be included in the Register of Interests. This would mean that such gifts and hospitality are registered as personal interests that would be required to be disclosed at a meeting. To ensure that the provision is proportionate, the requirement to declare the interest at a meeting would cease five years after receipt of the gift or hospitality.

### **Publicity Code**

It is proposed to include in section 5(b) of the Code (which relates to the use of the authority's resources) the need for Members to have regard to the guidance set out in the Government's Code of Recommended Practice on Local Authority Publicity. A copy of the Code can be found at:

<http://www.communities.gov.uk/index.asp?id=1133867>

### **Sensitive Information**

It is proposed to include a provision 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, or those with whom they live, being subject to violence or intimidation. Application for this exclusion would be made to the Monitoring Officer.

## **5 Consultation Timetable and Response**

The deadline for responses to the consultation paper is 9 March 2007. The Government's intention is that the necessary regulations can then be made in order for the revised Code to come into force at the same time as the local elections take place in May 2007.



At its meeting on 14 February 2007 the Fire Authority considered a report similar to this one and agreed to delegate authority to its Clerk and Monitoring Officer, in consultation with its Chair and the Chair of its Standards Committee, to respond to the consultation on its behalf. The Fire Authority asked that, if possible, the views expressed by individual Members be included in the response. During the discussions Members objected to the proposed requirement that they declare at meetings the acceptance of hospitality up to five years after the event. It was, therefore, agreed that the Fire Authority's objection to this requirement be included in its response.

Unfortunately, the deadline for responses expires before the Standards Committee is due to meet. **If any Member of the Committee wishes a comment to be included in the Fire Authority's response, please would they advise the Corporate Services Manager before 9 March?**

Alternatively, if they feel strongly about a particular issue, they may wish to send an individual response directly to Communities and Local Government. The email address for responses is:

[William.tandoh@communities.gsi.gov.uk](mailto:William.tandoh@communities.gsi.gov.uk)

The response, which the Clerk and Monitoring Officer intend to send to Communities and Local Government, is attached as an appendix to this report.

## **6 Financial Implications**

There are no material direct costs arising directly out of this report.

## **7 Legal Comment**

New legislation will be required in order to make the changes to the Model Code of Conduct referred to in section 4 of this report. This will be in the form of a Statutory Instrument, which is included in the consultation document issued by the Department for Communities and Local Government and is entitled 'The Local Authorities (Model Code of Conduct) Order [2007]'. Until the proposed legislation (subject to any changes that result from the consultation exercise) comes into force and is adopted by the Fire Authority, the existing Model Code of Conduct (which is contained in Section 10 of the Shropshire and Wrekin Fire Authority Handbook) continues to apply.

## **8 Equality Impact Assessment**

This report has been assessed to ensure that any effect it might have would not result in discriminatory practice or differential impact upon specific groups.

Having considered the Service's Brigade Order on Equality Impact Assessments (Personnel 5 Part 2), Officers have concluded that the recommendation made within this report does not introduce or modify any policy, procedure or function within the organisation and an Initial Equality Impact Assessment is not, therefore, required.



## 9 Appendix

Shropshire and Wrekin Fire Authority Response to Consultation on Amendments to the Model Code of Conduct for Local Authority Members

## 10 Background Papers

### Communities and Local Government:

22 January 2007 Consultation on Amendments to the Model Code of Conduct for Local Authority Members

[www.communities.gov.uk/index.asp?id=1505696](http://www.communities.gov.uk/index.asp?id=1505696)

Code of Recommended Practice on Local Authority Publicity

<http://www.communities.gov.uk/index.asp?id=1133867>

Implications of all of the following have been considered and, where they are significant (i.e. marked with an asterisk), the implications are detailed within the report itself.

Balanced Score Card		Integrated Risk Management Planning	
Business Continuity Planning		Legal	*
Capacity		Member Involvement	*
Civil Contingencies Act		National Framework	
Comprehensive Performance Assessment		Operational Assurance	
Efficiency Savings		Retained	
Environmental		Risk and Insurance	
Financial	*	Staff	
Fire Control/Fire Link		Strategic Planning	
Information Communications and Technology		West Midlands Regional Management Board	
Freedom of Information / Data Protection / Environmental Information		Equality Impact Assessment	*



## Shropshire and Wrekin Fire Authority Response to Consultation on Amendments to the Model Code of Conduct for Local Authority Members

***Q. 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 do so would be in the public interest?***

There are concerns that this could be abused by some members, but if the principle of disclosure on this basis were accepted the provisos incorporated in the draft code of reasonableness, public interest, acting in good faith and within the reasonable requirements of the authority would go some way towards addressing those concerns.

***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?***

Whilst it is accepted that the High Court has ruled that members can only breach the code if they are performing their duties as a member, the amendment of the Local Government Act 2000 in the Local Government and Public Involvement in Health Bill would specifically enable the code to cover behaviour in a private capacity. It is considered that the proposal to provide that the code should only cover other private behaviour, for which the member has been convicted, will miss the opportunity of dealing with private conduct of a serious nature, which could clearly affect the reputation of the authority.

***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, 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?***

It is felt that the Code of Practice contains useful guidance to members and reference to it in the model code is welcomed. It should be amended, however, to



prevent publicity which is, or is perceived by the reader to be, party political in nature within 6 months preceding the periodic election of councillors.

There seems to be no reason why other authorities not already covered by the Code of Practice should not be bound by it.

***Q 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?***

It is considered that this is far more onerous than that which applies to Members of Parliament, who are likely to make much more significant decisions with greater consequences.

Whilst the Fire Authority welcomes the requirement for gifts and hospitality to be maintained in a public register, objects to the proposed requirement that Members declare at meetings the acceptance of hospitality up to five years after the event.

***Q5. Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of the 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?***

Members do not feel that the addition of 'close personal relationship' does much to clarify the position. Members are aware that the Standards Board has issued guidance regarding who should be treated as friends within the meaning of the code, but they consider that this needs to be restated in relation to friends and those with a close personal association with the member.

***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?***

(Note: the new exceptions relate to indemnities, setting the council tax and considering bestowing the title of freeman)

Members have no objection to these new exceptions being included but do not see the strict necessity. It is clear that some authorities are taking too narrow an interpretation of the code.

***Q7. Is the proposed text relaxing the rules to allow increased representation at meetings, including where members attend to make representation, answer questions, or given evidence, appropriate?***

It is not considered necessary to introduce a public service interest test and in our view the present regime is perfectly workable. It is felt that public confidence in local





authority decision making will be damaged by the public seeing members speaking in favour of various bodies, of which they are members.

**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?**

It is not considered that this is necessary and the expression 'member' is perfectly clear.

### **Other comments**

- Members are disappointed that the code does not set out the ten general principles in a preamble and feel that their inclusion would set the appropriate context for what follows.
- It is noted that the requirement to whistleblow has been removed. On a related matter members do not feel that the amendment to the legislation referring complaints direct to the local authority gives sufficient flexibility to deal with minor complaints in a less formal manner, i.e. by group action.
- It is noted that the code does not require members to register private clubs and organisations, although there was a suggestion in the original consultation that this might be required. Members feel that such a requirement would have added further to the transparency of local decision making.
- It is considered that the words 'resources' and 'improperly' need to be defined and the use of 'party political' will cause difficulties when the whole role of a member at local government level is characterised by party politics.
- The relaxation of the definition of personal interests is welcomed but, if the Government wishes members to be able to take part in authority meetings on issues, which affect their community, the definition should be relaxed even further – perhaps to a proportion of the ward. A member's ward may be made up of several communities and, if the member lives in one of those communities, where everyone is affected by a decision, does the member have an interest?

