

COMMITTEE: STANDARDS
DATE: MONDAY 18 APRIL 2005
SUBJECT: LOCAL GOVERNMENT ACT 2000 – THE CODE OF CONDUCT FOR MEMBERS – “A CODE FOR THE FUTURE”: CONSULTATION REQUEST
REPORT OF: The Monitoring Officer

Ward(s): All

Purpose: To direct the Committee’s attention to the Standards Board’s consultation request regarding the Code of Conduct for members.

To ask the Committee whether it wishes to respond to the consultation request, and if so, to agree its response.

Contact: Victoria Simpson, Principal Lawyer and Deputy Monitoring Officer, telephone 01323 415044, or internally on extension 5044.

Recommendations: That the Standards Committee decide to respond to the Standards Board’s consultation request, either by responding to some or all of the twenty nine questions posed in the consultation document, and/or by making general comment.

1.0 Background

1.1 The Code of Conduct for Members as it currently stands (hereafter, ‘the Code’) may be found in the Local Authorities (Model Code of Conduct) Order 2001, this having been made pursuant to Part 3 of the Local Government Act 2000.

1.2 The Code is included in Eastbourne Borough Council's Constitution at Part 5, Section B and is founded on the ten general principles set out in The Relevant Authorities (General Principles) Order 2001. While not explicitly cited in the Code, the ten general principles are annexed to this report as appendix 1.

1.3 The Code – which came into force in May 2002 – has been described by the Standards Board as ‘a practical living document’; one which ‘needs to reflect the standards of conduct that the public expects of those who represent it, as well as reflecting effective local government practice’.

2.0 “A Code for the future” – an introduction to the consultation process

2.1 The Standards Board has issued a consultation document entitled "A Code for the Future" as part of a Government-initiated review process that was launched in September 2004 by the Minister of State for Local and Regional Government. The Code has been made available in the Members room and is additionally available online at:

<http://www.standardsboard.co.uk/TheCodeofConduct/Codeconsultation/>

2.2 The Standards Board has specified a deadline of 17th June 2005 for the submission of responses. Thereafter, it will in turn submit recommendations to the Office of the Deputy Prime Minister with a view to informing the Government's decisions as to whether, and if so, how, to revise the Code.

2.3 The Committee will note that the full consultation document serves to provide an indication of the Standards Board's preliminary position in relation to the issues. Committee members are therefore respectfully requested to consider the document prior to Committee.

3.0 Confidentiality of responses

3.1 Respondents' comments will be circulated both to the Local Government community and - via the Standards Board website - a more general audience. The Standards Board has stated that responses to the consultation exercise will not be treated as confidential unless a specific request is made.

4.0 "A Code for the Future" – the remit of the review process

4.1 The consultation process is described as one that – rather being about diluting the underlining principles of the Code – aims to see what may be adduced from the experience of working with the Code for almost three years in its current formulation.

4.2 Rather than being invited to amend the ten existing principles, consultees are asked to consider the effectiveness of the Code as it currently stands in reflecting those principles. This may however include considering whether additional principles might be needed. In addition the question is posed as to whether the general principles should be explicitly stated in the Code in the interests of clarity.

4.3 The Committee will note that twenty-nine questions have been posed in the consultation document, attached as appendix 2, these purporting to cover the range of areas that the Standards Board view as being of most concern to Local Government.

4.4 The Standards Board notes that "concerns have been expressed particularly regarding the registration of interests, the line between public and private conduct and personal and prejudicial interests", stating that opinions on issues not specifically covered by the twenty-nine questions are welcome.

4.5 As noted above, the consultation exercise is directed at "everyone with an interest in the Code", whether within the Local Government community or outside it. Members are thus free to submit comments to the Standards Board in any of a number of capacities (as individuals, via their party, or otherwise), whether in addition to or as well as responding via the Standards Committee.

4.6 An important aspect of the Standards Committee's role and function is that of monitoring the operation of the Members Code (this being stated in article 9 of Eastbourne Borough Council's Constitution, contained in Part 2). Given this, the Standards Committee is particularly well-placed to participate in the Standards Board's consultation process.

5.0 The Standards Committee and the review process

5.1 The Committee is requested to consider firstly whether it seeks to participate in the consultation process.

- 5.2** If the Committee does seek to participate then it needs to consider which aspects of the Code it wishes to comment on. This will involve either:
- responding to some or all of the twenty-nine questions
 - either alternatively or in addition submitting a response on issues not specifically covered by the twenty-nine questions

5.3 Thereafter the Members should proceed to formulate any response they seek to communicate, indicating appropriately if they seek to make that response confidential so that this can be communicated to the Standards Board.

6.0 Recommendation

6.1 That the Standards Committee elects to participate in the consultation process and that further it begins its discussion by determining which topics it considers to be most significant and/or which questions it seeks to respond to.

7.0 Human Resource & Financial Implications

7.1 There are none which derive specifically from this report.

8.0 Conclusion

The Committee is requested to consider firstly whether it seeks to participate in the consultation process by submitting a response from the Standards Committee.

If the Committee does seek to participate then it should consider which aspects of the Code it wishes to comment on. This may include either:

- responding to some or all of the twenty-nine questions
- either alternatively or in addition submitting a response on issues not specifically covered by the twenty-nine questions

Thereafter, the Members need to formulate any response they seek to communicate, indicating if they seek to make that response confidential.

Victoria Simpson, Principal Lawyer and Deputy Monitoring Officer.

Background Papers:

The background papers used in compiling this report were as follows:

“A Code for the Future”: an introduction to the review of the Code of Conduct for Members published by the Standards Board for England and available online at <http://www.standardsboard.co.uk/TheCodeofConduct/Codeconsultation/>

APPENDIX 1

THE PRINCIPLES OF LOCAL GOVERNMENT CONDUCT

Selflessness

Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities, and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

Members should be as open as possible about their actions and those of their authority, and should be prepared to give reasons for those actions.

Personal Judgement

Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to Uphold the Law

Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

Members should do whatever they are able to do, to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

Members should promote and support these principles by leadership, and by example, and should always act in a way that secures or preserves public confidence.

APPENDIX 2

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| | The general principles |
| Q1 | Should the ten general principles be incorporated as a preamble to the Code of Conduct? |
| Q2 | Are there any other principles which should be included in the Code of Conduct? |
| | Disrespect and freedom of speech |
| Q3 | Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement? |
| Q4 | Should the Code of Conduct include a specific provision on bullying? If so, is the Acas definition of bullying quoted in the full consultation paper appropriate for this? |
| | Confidential information |
| Q5 | Should the Code of Conduct contain an explicit public interest defence for members who believe they have acted in the public interest by disclosing confidential information? |
| Q6 | Do you think the Code of Conduct should cover only information which is in law "exempt" or "confidential", to make it clear that it would not be a breach to disclose any information that an authority had withheld unlawfully? |
| | Disrepute and private conduct |
| Q7 | Should the provision relating to disrepute be limited to activities undertaken in a member's official capacity or should it continue to apply to certain activities in a member's private life? |
| Q8 | If the latter, should it continue to be a broad provision or would you restrict it solely to criminal convictions and situations where criminal conduct has been acknowledged? |
| | Misuse of resources |
| Q9 | We believe that the Code should prohibit breaches of the publicity code, breaches of any local protocols, and misuse of resources for inappropriate political purposes. Do you agree? |
| Q10 | If so, how could we define 'inappropriate political purposes'? |
| Q11 | Is the Code of Conduct right not to distinguish between physical and electronic resources? |
| | Duty to report breaches |
| Q12 | Should the provision of the Code of Conduct that requires members to report breaches of the Code by fellow members be retained in full, removed altogether, or somehow narrowed? |
| Q13 | If you believe the provision should be narrowed, how would you define it? For example, should it apply only to misconduct in a member's public capacity, or only to significant breaches of the Code? |
| Q14 | Should there be a further provision about making false, malicious or politically- |

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| | motivated allegations? |
| Q15 | Does the Code of Conduct need to provide effective protection for complainants against intimidation, or do existing sections of the Code of Conduct and other current legislation already cover this area adequately? |
| | Personal interests |
| Q16 | Do you think the term 'friend' requires further definition in the Code of Conduct? |
| Q17 | Should the personal interest test be narrowed so that members do not have to declare interests shared by a substantial number of other inhabitants in an authority's area? |
| Q18 | Should a new category of 'public service interests' be created, relating to service on other public bodies and which is subject to different rules of conduct? |
| Q19 | If so, do you think public service interests which are not prejudicial and which appear in the public register of interests should have to be declared at meetings? |
| Q20 | Do you think paragraph 10(2)(a-c), which provides limited exemption from the prejudicial interest rules for some members in certain circumstances, should be removed from the Code of Conduct? |
| Q21 | Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups? |
| | Prejudicial interests |
| Q22 | Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing? |
| Q23 | Do you think members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote? |
| | Registration of interests |
| Q24 | Should members employed in areas of sensitive employment, such as the security services, need to declare their occupation in the public register of interests? |
| Q25 | Should members be required to register membership of private clubs and organisations? And if so, should it be limited to organisations within or near an authority's area? |
| | Gifts and hospitality |
| Q26 | Should the Code of Conduct require that the register of gifts and hospitality be made publicly available? |
| Q27 | Should members also need to declare offers of gifts and hospitality that are declined? |
| Q28 | Should members need to declare a series of gifts from the same source, even if these gifts do not individually meet the threshold for declaration? How could we define this? |
| Q29 | Is £25 is an appropriate threshold for the declaration of gifts and hospitality? |