

Leeds City Council Standards Committee's response to Model Code consultation

Comments on timescales: The consultation paper states that the government are minded to implement the proposals in the consultation paper so that they come into effect in line with the local government elections 2009. Some authorities do not have elections in 2009. There will need to be enough time for the Standards Committees to meet prior to the Annual Meetings of each authority. The Standards Committee would suggest that the proposals could become effective from the annual meeting of each Local Authority.

In addition, it is unclear (until November) whether the local election date will be amended to 4th June 2009 to coincide with the European elections. If the date of the local elections is changed to 4th June 2009, some authorities will have already had their annual meeting and adopted their constitution by the time the Order is implemented.

Chapter 2: 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?

The Standards Committee does not oppose the proposal that the Members' Code should apply to Members' conduct when acting in a non-official capacity, as long as there is a restricted definition of non-official capacity.

Question 2: Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

The Standards Committee stated in the previous consultation response that it would also seem logical that behaviour which breaches the criminal law but is sanctioned without conviction by a court should also be included, for example those sanctioned by a fixed penalty notice or caution. However, if it is the government's intention to only cover serious criminal offences, it would be more sensible to restrict the definition to cover only behaviour for which the Member has been convicted by a criminal court.

The link to a criminal conviction provides clarity in terms of whether behaviour would or would not be relevant, however it would also mean that behaviour, which may be criminal, that does not trigger criminal proceedings, possibly as a result of a public interest decision made by criminal justice agencies, can not be taken into consideration by the Standards Committee.

However the definition needs to be drafted in such a manner as to exclude relatively trivial offences from the scope of the Code of Conduct.

The Standards Committee notes the Standards Board for England's intention to release guidance on how to treat a criminal offence in relation to a potential breach

of the Code of Conduct, and would hope that this guidance would be in place in time for the release on the new Code of Conduct in May / June 2009.

Question 3: Do you agree with this definition of ‘official capacity’ for the purpose of the members’ code? If not, what other definition would you support? Please give details.

The Standards Committee does not oppose the definition of official capacity as outlined in the consultation document.

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?

The Standards Committee does not oppose the proposal that if the Code of Conduct is made to apply to Members whilst they are abroad, it should only cover criminal offences that would also be criminal offences under UK law.

The Standards Committee does not oppose the proposal that the Code of Conduct should apply to a Member who has committed a criminal offence, even where there is no link with the functions of his or her office.

The Standards Committee notes the government’s proposal that criminal convictions would still have to be reported as potential breaches of the Code of Conduct by a written allegation to the Standards Committee. The Standards Committee would ask that further consideration be given to the implications for the ethical framework, for example, whether this would exclude referrals made by the police, court system or crown prosecution service as part of a system of referrals. It could be argued that without such a system of referrals, convictions which perhaps went unreported in the local news may go unnoticed by a local Standards Committee. In addition, a referral system would allow convictions which occur in other areas of the country to be considered by the relevant standards committee. With such a referral system the Code of Conduct would be applied more consistently to a Members’ personal life than if this solely relied on a written allegation by a member of the public.

The Standards Committee would also ask the government to consider utilising the new Independent Safeguarding Authority, who are able to notify employers when there is a change to the status of a person’s criminal record. If Councillors are to be covered by this system, it would make sense that notification of a criminal conviction should also lead to a complaint to the relevant standards committee.

Question 5: Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

The Standards Committee does not oppose the suggestion that any ethical investigation should be put on hold until the criminal process has been completed. If the Code of Conduct is to only cover criminal offences for which the Member has been convicted, it would be impossible for the Standards Committee to reach a conclusion as to whether the Code of Conduct had been breached until the criminal process had concluded.

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 Standards Committee does not oppose the proposal that paragraph 12(2) of the current Code should no longer be optional for Parish and Town Councils. There would seem to be no reason why a Parish or Town Council would want to prevent their Councillors from having the right to speak on such matters, and the element of choice has the potential to cause confusion when providing advice to Clerks on prejudicial interests, and when considering complaints submitted about Parish and Town Councils.

The Standards Committee does not oppose the proposal that the wording of paragraphs 8(1)(a)(i) and (ii) should be amended to make it clear that membership of the authority itself is not something which needs to be registered. It may also assist Members if the wording was clarified even further to establish whether these paragraphs include Council committees or boards.

The definition of a 'relevant person' in paragraph 8(2)(b) also needs clarifying, as 'any body who has appointed you' may also include the authority itself or any of its committees or boards.

The Standards Committee consider that it would be helpful if a reference to predetermination were included in the wording of the Code of Conduct in relation to matters which are being considered by more than one committee. This would provide Members with clarity regarding their obligations during meetings, and would bring issues of predetermination into the remit of the Code of Conduct.

The Standards Committee also consider that it would be helpful if the term "business of the authority" were defined in the Code of Conduct. Particularly whether the term includes informal meetings and site visits.

The Standards Committee does not oppose the proposal that the wording of paragraph 8(1)(a) of the Code should be amended to make it clear that Members' are not required to find out and register the interests of any person who has provided them with a gift or hospitality, but rather need to register the details of the gift and the name of the donor. The Standards Committee would also ask the government to consider whether it might be appropriate for Members to register any gifts or hospitality received in their capacity as an election candidate (for example from the nomination deadline), in the same way that election donations should be registered as an interest following election.

The Standards Committee would again suggest that the financial threshold of £25 is too low. In response to the consultation exercise conducted in 2006 the Council proposed a raised threshold of £100.

Currently the Code of Conduct requires Members to register all gifts and hospitality they receive in their capacity as a Councillor, but only to declare these entries at

meetings for three years. Would it be possible to amend the Code of Conduct to allow these entries to also be deleted from the register of interests after three years? If these gifts cease to be personal interests for the purposes of meetings after three years, it would also seem sensible that they cease to be personal interests for the purposes of the register of interests. This would also assist Members and officers with seeing clearly which interests they may need to declare at meetings (this is especially the case for previous Lord and Deputy Lord Mayors), and may prevent complaints from members of the public who do not understand that Members need not declare these interests in meetings after three years.

The Standards Committee does not oppose any of the three proposed amendments to the definition of prejudicial interests outlined in the consultation document. However, in order for the paragraph to make sense, a negative will also have to be introduced to the wording of paragraph 10(2)(c), as follows:

“You have a prejudicial interest in any business of the authority where that business-

- (a) affects your financial position or the financial position of a person or body described in paragraph 8;
- (b) relates to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8;
- or
- (c) does not relate to the functions of your authority in respect of-
 - (i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;
 - (ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full-time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;
 - (iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;
 - (iv) an allowance, payment or indemnity given to Members;
 - (v) ay ceremonial honour given to Members; and
 - (vi) setting council tax or a precept under the Local Government Finance Act 1992.”

The Standards Committee also believe that the list of exemptions in paragraph 10(2)(c)(ii) should be amended to include other types of school governor, rather than being restricted to parent governors.

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?

The Standards Committee does not believe that there are any aspects of conduct included in the current Code of Conduct that are not required.

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.

In Leeds, Members are advised that where they have a prejudicial interest in a matter they should also declare this and withdraw from any informal or pre-meetings (even though these do not fall within the formal definition of a meeting in the Code), as this may be seen as improper influence. It may be useful to clarify that these aspects of a Members' official capacity could also cause them to breach the Code in this way.

It would be helpful to include clarification either in the Code itself or within guidance as to the meaning of 'decision' and 'improper influence' at paragraph 12(1)(c) of the Code.

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?

The Standards Committee understand that the government is proposing that the new Members' Code will take into account any existing registration of Members' interests, and therefore Members will not be required to re-register their interests once the new model Code is adopted. The Standards Committee is pleased to note that this is the case as it was viewed by many Members and officers as being an onerous requirement in view of full existing registrations in place. However, the Standards Committee is concerned that the public may not be aware of the transferring of registration under the new Code and may make numerous complaints for failure to register which would have to be processed under the Local Assessment regime regardless of the fact that the legislation underpinning the change carries existing registration of interests into the new regime.

The Standards Committee also understand that the government is proposing that Members will be required to sign an undertaking to abide by the new Code of Conduct within two months of its adoption. When the previous model Code was brought into force in May 2007, advice from the Standards Board for England indicated that Members were not required to sign a new undertaking. Instead it was considered that the wording within the acceptance of office, that Members agreed to abide with the Code of Conduct in force at the authority, was sufficient.

The Standards Committee consider that it would be helpful if existing declarations of acceptance could be carried into the new Code immediately upon adoption by the authority. This would help to reduce confusion which could arise regarding which code applies to Members in relation to complaints for the period between adoption by the authority and acceptance by individual members of the Code.

In the event that a written undertaking is required, the timescale of two months would seem a sufficient timescale for Members to give a written undertaking to abide by the new Code, and arguably could be reduced to four weeks, although the possible change in date of the local elections would need to be considered, as this exercise could result in Members signing two undertakings; once after the Code's adoption, and again following the local elections.

However, the Standards Committee is concerned that two months may not be a sufficient timescale to train all Members prior to them providing a written undertaking. This will especially be the case for authorities with large numbers of members.

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 Standards Committee does not oppose the proposed addition of the new general principle. However given that the general principles are not directly binding on Members in the same manner as the Code, the Standards Committee is unsure that the principle needs to be related to conduct in a member's non-official capacity.

The Standards Committee would ask the government to consider fully incorporating the general principles into the Code of Conduct to clarify whether they are binding on Members, and whether they are a material consideration when assessing complaints about the conduct of Members.

Question 11: Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

If the general principles are not enforceable, and are there to underpin and inform Members' understanding of the Code of Conduct, it would seem sensible that the definition of a 'criminal offence', is the same as that used for the Code of Conduct.

Question 12: Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

If the general principles are not enforceable, and are there to underpin and inform Members' understanding of the Code of Conduct, it would seem sensible that the definition of 'official capacity', is the same as that used for the Code of Conduct.

Chapter 3: 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?

The Standards Committee agree that a mandatory model code of conduct for employees is required. Leeds City Council currently has an employee's code which is incorporated in their terms and conditions, but it would be of assistance to have consistency with other local authorities, particularly on issues such as the employee register of interests.

Question 14: Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

This questions raises the serious objection that if the proposed employee's code is not applied to these categories of workers, then the 'beyond the core values' additional requirements could not be applied to 'qualifying employees' within those categories. That would, for example, mean that those additional requirements could not be applied to a Monitoring Officer who is a solicitor, as the great majority are.

The Standards Committee believes that the employee's code should apply to all local authority employees, and that the individual professional codes should apply to these employee's alongside the local government code of conduct.

Question 15: Are there any other categories of employee in respect of whom it is not necessary to apply the code?

Officers working in different environments, with different access to information, or different levels of contact with members of the public would find an employee code more or less relevant to their jobs. However for the purposes of consistency the code should apply to all categories of local authority employee.

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?

The employee's code correctly reflects the core values that should be enshrined in the code.

However the requirement for political neutrality states that employees must not allow their own personal or political opinions to interfere with their work. The Standards Committee would ask the government to consider how this might impact on the employee's right to take part in strike action as part of a trade union.

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 Standards Committee believes that the selection of 'qualifying employees' should be made on the basis of the Council's delegation scheme. This would be manageable for officers named in the Constitution's delegation scheme, and applying the extended code of conduct to these employees could be met from within the authority's existing resources. However, although the national framework should apply to officers named in the Constitution's delegation scheme, it could be delegated to each local authority to decide whether to extend the scheme to apply to other officers who are delegated powers by their Director of Chief Officer in turn.

The Standards Committee are mindful that every day across the Council, officers are taking decisions. They do this in relation to both executive and non-executive functions; and the functions delegated for officer decision are set out transparently in the Officer Delegation Scheme which is incorporated in the Council's constitution. However, the Committee has a real concern about the level of transparency associated with officer decision-taking, and that arrangements in respect of officer declarations of interest are neither universal nor fully transparent. The Standards Committee are particularly concerned about relatively junior employees who are 'sub-delegated' powers to approve licensing or planning applications and how closely these officers are monitored in terms of any interests they might have.

If the government is minded to select qualifying employees based on the delegation model, the Standards Committee would ask the government to consider extending the local government inspection regime to include delegation schemes, and how these are applied across local authorities.

Question 18: Should the code contain a requirement for qualifying employees to publicly register any interests?

The Standards Committee agrees that it seems sensible that the new employee's code should contain a requirement for qualifying employees to publicly register their interests, subject to certain tight exclusions for reasons of personal and family security.

The Standards Committee have previously discussed publishing the register of interests for certain officers in Leeds City Council, and have written to Mr John Healey MP on this subject.

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?

The list of categories within the consultation paper would seem to cover all the financial interests which may arise. However, it is unclear whether it would be proportionate to require employees to publicly register their home address. The Standards Committee agree that this information should be made available to the employee's manager(s), to Members under their 'need to know' rights, and to members of the public if they raise a concern about an officer's decision, but that this information should be restricted to these parties.

The matters which an employee will be required to register are matters in their private life. The requirement to register these interests with their employer is therefore an infringement of Article 8 of the Human Rights Act (Respect for private life, etc.) and potentially of the Data Protection Act 1998. Any public right of access to this personal information would be much more serious infringement of those rights of protection of private life and personal information, and should therefore only be granted if it is necessary for the protection of the rights and freedoms of others and the maintenance of public morals.

Since the Employees' Code is imported into employees' terms and conditions of employment and enforced through the employers' disciplinary process, it must be questioned what wider public interest would be served by the publication of such information. It should also be noted that JNC terms and conditions of employment currently prohibit the employing authority from disclosing personal information about an employee without his/her consent.

A further question arises as to whether it should be open to inspection by all Members of the employing authority. In the absence of express legislative provision, the view is taken that Members would not have any automatic right of access to the register, but might make a specific enquiry in respect of a named officer where they were able to demonstrate that they had a real need to know that information in order to discharge their functions as a member. Otherwise access would be limited to named employees in respect of only those employees for whom they had direct responsibility.

The Standards Committee would assume that the same guidance on what to register under these categories would apply to officers, as currently applies to Members.

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 Standards Committee disagrees with the proposals regarding employees and prejudicial interests. If a similar definition of prejudicial interests to that in the Members' Code is going to be used in the employee's code, it would seem sensible that the action required of the Member and officer should be the same i.e. that they take no part in the decision. In the consultation paper government seems to propose that officers only need to declare their prejudicial interest if it is not possible for them to withdraw from the decision making process. We would suggest that the same rules should apply to officers as apply to Members, and therefore alternative arrangements would need to be put in place to consider the matter if an officer had a prejudicial interest i.e. the matter should be referred upwards through the scheme of delegation, or to the relevant Council Committee. In such exceptional circumstances where no alternative route is available, such as the recruitment process, then additional control arrangements should be put in place for employees with prejudicial interests.

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?

There do not appear to be any elements of the employee's code, as outlined in the consultation paper, which are not necessary, but the Standards Committee would like to suggest that the wording of the section 'compromising the impartiality of officers of the authority' is amended to make it clear that senior officers can ask officers to alter their advice to a Committee or to take alternative action, if the action or report is being taken in their name. At the moment it could be interpreted that any request to change advice is inappropriate.

The Standards Committee agrees that it should be up to each authority how they should apply the employee's code when working in partnership with other bodies, however the Standards Committee is of the view that the employee's code would always apply to Council employees, whether they are working in partnership or not. Any additional requirements imposed by the partner organisation would have to be followed in addition to the employee's code imposed by the authority.

Question 22: Should the employees' code extend to employees of parish councils?

There does not seem to be anything within the employee's code, as proposed, which would be onerous on smaller Parish Councils. However, it may be difficult for some smaller Parish Councils to enforce the code and incorporate it into the terms of conditions of the clerk's employment, as some Parish Clerks only work for a few hours a week and on an entirely voluntary basis.

The Standards Committee would suggest that the government contact the National Association of Local Councils and the Society for Local Council Clerks for feedback on this proposal.