

**BABERGH DISTRICT COUNCIL**

**FROM:** Head of Legal and Administrative Services

**REPORT NUMBER**    **E20**

**TO:**    **STANDARDS COMMITTEE**

**DATE OF MEETING**    **13<sup>th</sup> May 2005**

**NATIONAL REVIEW OF THE CODE OF CONDUCT – CONSULTATION PAPER**

1.    **SUMMARY**

The Standards Board for England is undertaking a review of the model Code of Conduct and as part of that review the Standards Committee has been invited to respond to a consultation paper by 17<sup>th</sup> June 2005.

2.    **RECOMMENDATIONS**

2.1    That the Head of Legal and Administrative Services be authorised to respond to the Standards Board on the Committee's behalf to summarise the Committee's views to the issues set out in the consultation paper concerning the proposed review of the Code of Conduct.

2.2    That the Committee agree to publication of its response to the consultation paper by the Standards Board.

The Committee is able to resolve this matter

3.    **FINANCIAL IMPLICATIONS**

3.1    None.

4.    **KEY INFORMATION**

4.1    The Members' Code of Conduct is based upon the Code of Conduct set out in the Local Authorities (Model Code of Conduct) (England) Order 2001 which came into force in May 2002. The Government is conducting a review of the Code in consultation with the Standards Board which has published a consultation document and leaflet comprising 29 key questions on which the Committee's views are sought. A copy of the leaflet is annexed for ease of reference.

4.2    Copies of the leaflet were circulated to the Group Leaders and Mr Arthey with an invitation to submit any comments on the various issues set out therein by 15<sup>th</sup> April 2005. No responses have been received at the date of compilation of this report.

5.    **GENERAL PRINCIPLES**

5.1    The 29 questions fall into 10 broad categories. The first category concerns the general principles contained in the Relevant Authorities (General Principles) Order 2001. These are:-

- *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 act in a way that secures or preserves public confidence.

5.2 The Code of Conduct is required to be consistent with these general principles although they are not expressly incorporated therein. The view of the Standards Board is that the general principles are fundamental to interpretation of the Code and should be incorporated in the preamble without a failure to comply to the principles being grounds for investigation. Committee may consider this approach to be a useful reminder of the principles. Whilst, the principles are widely drawn, the Committee may wish to assess whether greater clarity is required to any of the principles; in particular 'honesty and integrity'. Further consideration could be given to whether Members should be required to attend training and development on the Code.

## 6. **DISRESPECT AND FREEDOM OF SPEECH**

6.1 Two issues require consideration, being 'respect' and 'bullying':-

- The Standards Board has experienced difficulty in interpretation of the duty to treat others with respect. As 'respect' is a subjective term, there are often differences between individuals and cultures as to what constitutes disrespect. However, the Board is concerned that a more defined test could lead to inflexibility in what is an important requirement and restrict the right of members to comment on matters of public concern. Members may feel that it should be possible for the duty to be broadly worded, in clear terms without the need to rely upon legalistic tests.

- The duty of respect is sufficiently broad to encompass bullying of officers and fellow members, although the Board believes that a new provision specifically addressing bullying would be of significant symbolic and practical value. It suggests that the provision be based upon the ACAS definition, being:-

*“Bullying may be characterised as a pattern of offensive, intimidating, malicious, insulting or humiliating behaviour; an abuse or misuse of power or authority which attempts to undermine an individual or a group of individuals, gradually eroding their confidence and capability, which may cause them to suffer stress...”*

6.2 The Board invites views on how else bullying might be defined. It acknowledges that the definition does not include a one-off occurrence which may nevertheless be a serious breach of the Code, but intends the definition to be a starting point. Members may wish to consider whether the definition should include reference to the assertion of undue pressure which by reason of its manner or persistence may amount to bullying.

## 7. **CONFIDENTIAL INFORMATION**

7.1 There have been problems in interpretation of the duty not to disclose information given to a member in confidence or which the member has acquired and believes to be of a confidential nature. As drafted, the provision does not clearly distinguish between information ‘given in confidence’ and information of a ‘confidential nature’ given to a member. For this reason, the Council has occasionally requested individual members to sign a confidentiality clause when confidential information has been provided.

7.2 The position is further complicated by the Freedom of Information Act 2000 which was implemented at the start of the year. The Act provides for public disclosure of information, but allows an exemption for confidential information. A local authority must balance the need for confidentiality against the public interest in disclosing information with emphasis towards disclosure. The Board suggests that the duty need simply provide that a member should not disclose information which is lawfully confidential or exempt under existing legislation. Whilst this would provide some clarity, Members may feel that guidance would be needed as to what information is confidential or exempt at law. Ultimately though, this would be a matter for interpretation by the courts.

7.3 A view is further sought on whether it should be a defence that confidential information has been disclosed in the public interest. This would provide consistency with the Freedom of Information Act. However, Members would need to be mindful of such matters as disclosure of commercially sensitive information and infringement of third party rights. The Council would also be concerned to ensure that it could not be subject to complaint to the Information Commissioner or the subject of legal action should a member disclose confidential information in breach of the Data Protection Act 1998 or other provision.

## 8. **DISREPUTE AND PRIVATE CONDUCT**

8.1 The approach taken by the Board is to assess whether the conduct of the member is likely to compromise the reputation of the authority (rather than questioning the social immorality of the member’s conduct). In doing so the Board has tended to determine whether:-

- it is unlawful behaviour that would be sanctioned by the police or courts, or
- it is private behaviour that brings into question the member’s fitness to carry out official duties, or

- it is private behaviour that has undermined the public's confidence in the member's ability to carry out official duties.

8.2 Members are invited to assess whether this approach is reasonable or whether a breach of the Code should be limited to criminal convictions alone or include cautions. Members may consider that personal conduct could have a direct impact and effect on official capacity. Accordingly, an alternative solution would be for the Code to cover personal conduct only in so far as it infringes a 'reasonable member' test i.e. whether on balance a member knowing all the relevant facts should have known that the conduct would bring their position into disrepute.

## 9. **MISUSE OF RESOURCES**

9.1 The Code prohibits a member from using or authorising use of resources in breach of the authority's requirements or for political purposes unless reasonably likely to be regarded as facilitating the discharge of the authority's functions. 'Resources' includes land, premises, equipment and the time/skill of employees. The provision was intended to reflect the requirements of the Local Government Act 1986 but goes beyond this. Consequently, there has been suggestion that there be allowed a low threshold for some resource use by members. The Board would prefer this to be a matter for local protocols and to retain a general approach prohibiting breaches of the publicity code, local protocols and misuse of resources for inappropriate political purposes. If Committee agrees this approach, it could consider recommending that the provision be strengthened to deal with misuse of power (which goes beyond use/misuse of Council resources or position as a member).

9.2 "Inappropriate political purposes" could be defined by the negative i.e. anything that does not serve or further the best interest of the local authority and the citizens of the area. This is clearly all embracing and would extend beyond political activities. The benefit of such an approach would help to reinforce the primary purpose of a member to serve or further the best interests of the locality and not themselves, their friends or political parties.

9.3 The Board maintains that the Code should not be changed to distinguish between physical and electronic resources as it is simply reflecting a principle. Since the Council has its own protocol that addresses the use of electronic resources, the Committee may concur with the Board's view.

## 10. **DUTY TO REPORT BREACHES**

10.1 The requirement to report a fellow member to the Board for any breach of the Code was intended to ensure that breaches are not disregarded and to provide protection to the reporting member. Whilst this has resulted in consideration of complaints that would not otherwise have been investigated, the Board is concerned that complaints have been made which are politically motivated or malicious. A number of solutions could be considered, such as:-

- removal of the provision and relying instead on the integrity of members to report breaches
- amending the duty to cover significant, serious or material breaches, or misconduct in public life
- amending the duty so that members must in the first instance report breaches to the monitoring officer or chair of the standards committee to decide whether to refer the matter on to the Board
- narrowing the duty to matters within the member's personal knowledge
- introducing provision to make it a breach of the Code to make false allegations

- 10.2 Members may have concern that suggestion 2 is entirely subjective in the absence of adequate guidance and that it would be inappropriate for one individual to determine whether there is a breach which warrants reference to the Board, as per suggestion 3.
- 10.3 The Code, together with fairly extensive statutory provision, is probably sufficient to afford protection for ‘whistle blowing’. Additional security could be included by it being a breach of the Code for any member to interfere, harass, victimise, bully or in any other way influence or adversely effect the complainants with regard to any complaints brought against the member.

## 11. **PERSONAL INTERESTS**

- 11.1 The term ‘friend’ is not defined in the Code but is given its common-sense everyday meaning. The Board has also issued guidance that a friend is someone well known to another and regarded with liking, affection and loyalty. This definition appears to have stood the test of time and as other expressions such as ‘relative’ and ‘partner’ are defined in the Code, it would make sense for ‘friend’ to be likewise incorporated.
- 11.2 Clearly, open and transparent local governance is essential for a healthy democracy and since the personal interest test does not appear to be causing any major difficulties, Members may be inclined to the view that the test does not need to be narrowed.
- 11.3 The Board has noted that it is common for members to serve on other public bodies which can then necessitate mass declarations of interests. Further, Paragraph 10(2) of the Code states that a member may regard himself as not having a prejudicial interest in a matter if that matter relates to:-
- (a) another relevant authority of which he is a member;
  - (b) another public authority in which he holds a position of general control or management;
  - (c) a body to which he has been appointed or nominated by the authority as its representative

There is no guidance on when it would be appropriate to rely on these provisions which has led to widespread confusion and anxiety. It is proposed that a new ‘public service interest’ is created which need not be declared at a meeting provided the interest is not prejudicial. Paragraph (a)–(c) would be removed and the new ‘public service interest’ would be subject to the usual prejudicial interest test. This new approach would appear beneficial provided that there is a clear definition of ‘public body’ and it is clearly set out as to avoid any confusion.

- 11.4 It may be considered appropriate to regard ‘public service interests’, once declared in the public register of interests, as being "automatically declared" (provided that they are not ‘prejudicial’) without having to be repeated at each and every meeting. This could be subject to the relevant member, Chairman of the relevant Committee or Monitoring Officer determining otherwise.
- 11.5 Where the interest arises from membership of charities, lobby groups and public service interests, the Board believes that it should only be prejudicial where:-
- the matter has a direct impact on the body concerned e.g. grant of money
  - the member is involved in regulatory matters in a decision-making capacity e.g. planning and licensing

In such cases, the Board considers that the member should be able to participate in the debate but withdraw for the vote. Again, there appears merit to this approach subject to clear guidance so that the position does not become unnecessarily confused.

## 12. **PREJUDICIAL INTERESTS**

- 12.1 Members will be aware that since the Court of Appeal's decision in the Richardson case, members must withdraw from the meeting if they have a prejudicial interest. General concern has been expressed that this unnecessarily limits the information and advice available to the voting body and that the member should be able to submit views as a member of the public. The Board maintains that all members have influence by virtue of their role and this influence may be brought to bear even if the member addresses the meeting in their personal capacity. Moreover, another member without a prejudicial interest can be asked to present their constituent's views. Members may wish to consider whether any distinction should be made for those meetings where the public are invited to speak (e.g. Development and Licensing Committees) and members be entitled to address the meeting on those occasions and leaving the room for the vote.

## 13. **REGISTRATION OF INTERESTS**

- 13.1 A dispensation is proposed from publicly registering details of employment which could give rise to security issues surrounding the work or threaten the safety of the member and their family. The Board suggests that this be subject to the monitoring officer being satisfied that it is sensitive employment.
- 13.2 There has been confusion over the scope of organisational memberships that should be registered and in particular private clubs and organisations due to a lack of clarity in the Code. It appears that an explicit requirement to register such interests is needed, but only those within or near the authority's area.

## 14. **GIFTS AND HOSPITALITY**

- 14.1 It is suggested that the register of gifts and hospitality be made publicly available and for gifts declined also to be listed. The further proposal to require registration of a series of gifts which are individually worth less than £25 but collectively exceed this figure, could prove onerous particularly if the gifts have been made over a prolonged period of time. The general view of monitoring officers appears to be that £25 is a reasonable limit although it may be noted that some Council's have suggested a figure of £100.

## 15. **PUBLICATION OF RESPONSE**

- 15.1 The Standards Board will publish a summary of all responses received to the Consultation paper and may additionally make public individual responses unless confidentiality is requested. It is recommended that the Committee agree publication of its response.

## 16. **APPENDICES AND BACKGROUND PAPERS REFERRED TO:**

- (a) Consultation paper and leaflet "A code for the future" produced by the Standards Board
- (b) Members' Code of Conduct

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