

AGENDA MANAGEMENT SHEET

Name of Committee

Cabinet

Date of Committee

16 June 2005

Report Title

A Code for the Future

Summary

This report advises the Cabinet of the Standards Board for England consultation on the Members Code of Conduct and suggests a possible response to the issues raised. It also sets out the views of the Standards Committee

For further information please contact:

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Would the recommended decision be contrary to the Budget and Policy Framework?

No.

Background papers

A Code for the Future Consultation paper issued by the Standards Board for England

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

CONSULTATION ALREADY UNDERTAKEN:-

Details to be specified

Other Committees

☐ Standards Committee 24 May 2005

Local Member(s)

☒ N/A

Other Elected Members

☒ All members have been circulated with a copy of the consultation paper.

Cabinet Member

☒ Councillor Alan Farnell

Chief Executive

☒ David Carter, County Solicitor and Assistant Chief Executive

Legal

☒ Jane Pollard

Finance

☐

Other Chief Officers

☐

- | | | |
|--------------------------|--------------------------|-------|
| District Councils | <input type="checkbox"/> | |
| Health Authority | <input type="checkbox"/> | |
| Police | <input type="checkbox"/> | |
| Other Bodies/Individuals | <input type="checkbox"/> | |

FINAL DECISION Yes

SUGGESTED NEXT STEPS:

Details to be specified

- | | | |
|--|--------------------------|-------|
| Further consideration by
this Committee | <input type="checkbox"/> | |
| To Council | <input type="checkbox"/> | |
| To Cabinet | <input type="checkbox"/> | |
| To an O & S Committee | <input type="checkbox"/> | |
| To an Area Committee | <input type="checkbox"/> | |
| Further Consultation | <input type="checkbox"/> | |

Cabinet - 16 June 2005.

A Code for the Future

Report of the County Solicitor and Assistant Chief Executive

Recommendation

That the Cabinet considers the issues raised in the consultation paper and approves/amends the suggested response.

1. The Standards Board published its consultation paper 'A Code for the Future' on 17 February 2005. The consultation ends on 17 June 2005. A draft letter responding to the various questions raised in the Consultation paper is attached as an Appendix.
2. copies of the consultation paper were circulated to all members of the previous Council and the Standards Committee considered the consultation paper at its meeting on 24 May 2005 and its comments have been included in the draft response.

DAVID CARTER
County Solicitor and Assistant
Chief Executive

Shire Hall
Warwick

11 May 2005

Appendix A

Your ref:
My ref: HJP/C9914414
Your letter received:

**Chief Executive's Department
Legal Services**
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Warwick, CV34 4RR
DX 723362 Warwick 5

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Emma Ramano,
The Standards Board for England,
First floor,
Cottons Centre,
Cottons Lane,
London,
SE1 2QG

16 June 2005

By email enquiries@standardsboard.co.uk

Dear Ms Ramano,

CODE CONSULTATION

I write to advise you of the views of the Warwickshire County Council on the issues raised in the review of the Code of Conduct for members of relevant authorities.

The General Principles

1. Should the ten general principles be incorporated as a preamble to the Code of conduct?

We agree with the views of the Committee on Standards in Public Life and the Standards Board that it would be useful to incorporate the ten principles as part of a preamble to the code. This would set the context for members and provide a single reference point.

2. Are there any other principles which should be included in the Code of Conduct?

We do not believe that there are any other general principles which need to be included.

Disrespect and freedom of speech

3. Is it appropriate to have a broad test for disrespect or should we seek to have a more defined statement?

We believe that the requirement to 'treat others with respect' should remain in its current broad form, and that clarification should be found through its application in particular circumstances. The term is in everyday use and we do not consider its definition should create any undue difficulty for members if approached with common sense.

4. 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?

The Code of Conduct already proscribes bullying and we do not believe that there is any necessity for a specific provision to be added. We do believe that this is a matter for guidance and that the ACAS definition may provide a starting point, however as the consultation paper points out the ACAS definition does not cover one off incidences which may still be serious breaches of the Code. The ACAS definition is too narrow in its current form.

Confidential information

5. 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?

We do not believe that there is a need for a public interest defence if the Code is amended to cover only information that is in law exempt or confidential. In addition members may at anytime seek advice from the Monitoring Officer to clarify the status of any particular information.

6. 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 a local authority had withheld unlawfully?

The code should be consistent with the legislative provisions governing access to information not only those under the Local Government Acts but also those of the Freedom of Information and Data Protection Acts etc. It should also respect any duty of confidentiality at common law. The legislative provisions should be consistent and we note that the governments' response to its consultation on local authority access to information is still awaited.

Whether or not information has been withheld unlawfully is essentially a matter for the Courts. It should not be open to individual members to disregard classifications of exempt or confidential information that may be applied by the Council. Members should seek advice from the Monitoring Officer if they are unclear about the reasons for the information being so classified.

Disrepute and private conduct

7. 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?

The Adjudication Panel for England has already held that there must be some causal link between the private conduct and official capacity in disrepute cases. This causal link should be strengthened within the Code. It might be helpful to include a test, for example, 'where the member's conduct is likely to materially affect public confidence in that member to carry out his or her role and a reasonable member of the public would think that a member's conduct is likely to bring the authority into disrepute'.

8. 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?

We do not consider it would be useful to seek to limit this provision to criminal conduct. Please see our answer to 7 above.

Misuse of resources

9. 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?

No. We do not believe that the code should prohibit breaches of any local protocols. Otherwise the Standards Board will be micro-managing very local issues which would be inappropriate.

The term 'inappropriate political purposes' is difficult to define and will not add anything to the existing controls.

10. If so, how could we define 'inappropriate political purposes'?

Please see our comments in 9 above.

11. Is the Code of conduct right not to distinguish between physical and electronic resources?

Yes.

Duty to report breaches

12. 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?

The current provision is too wide. If it is to remain at all it should be restricted to serious breaches.

13. 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?

If the provision is narrowed then it should relate only to matters which a member has personal knowledge of and only apply to matters of a serious nature. The test set out in paragraph 4.5.6 of the Consultation paper may be appropriate but we would support the suggestion that the words 'becomes aware' should be replaced with 'knows' requiring actual knowledge rather than a vague impression.

14. Should there be further provision about making false, malicious or politically motivated allegations?

We believe that express provision within the Code would provide some deterrent. However there is a distinction between politically motivated allegations and false allegations. Any provisions should be restricted to 'false allegations' which are either malicious or politically motivated.

15. 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?

We consider existing legislation already provides adequate protection. However it may be useful to make it clear that attempts to intimidate etc any complainant would in itself be in breach of the Code.

Personal Interests

16. Do you think the term friend requires further definition in the Code of Conduct?

No, however it might be helpful to make it clear that declarations can only relate to interests of a relative or friend of which the member is aware.

17. 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?

Whilst there is no evidence to suggest that this is causing any serious difficulties it might be helpful to narrow the test so that members do not have to declare interests shared by a substantial number of other inhabitants in an authority's area.

The proposals for public service interests and the suggestion that those that are registered do not have to be declared at every meeting may mitigate what may sometimes seem overly bureaucratic provisions of the current code.

18. 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?

We would wish to see further detailed proposals and understand exactly what is meant by different rules of conduct. It would be important to ensure that there is no confusion for members. It would be helpful to have a clear definition of 'public service interests' for this purpose.

19. 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?

No, see our comment above.

20. 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?

If they are to be replaced by more relaxed provisions relating to public service interests, then it might be appropriate to remove these provisions from the Code. However any new arrangements would need to be compatible with the law relating to bias and pre-determination.

The current application and interpretation of these provisions is unhelpful. The Code says quite clearly that use of these exemptions is a matter for member discretion, however the Standards Board has sought to fetter that discretion through guidance. Either these matters are for the individual member or they not.

If they are to remain then it would be useful for the terminology in the requirements to 'register' relating to public bodies and the use of 'public authority' in 10(2) b to be clarified. When is a body a public authority and when is it a public body?

21. Do you think less stringent rules should apply to prejudicial interests which arise through public service and membership of charities and lobby groups?

Public Service and membership of charities are distinctly different in their nature from lobby groups and we believe that any proposal to extend less stringent rules to lobby groups should be approached with caution. Any proposals must in order to avoid uncertainty for members be compatible with the law relating to bias and pre-determination, otherwise confusion will reign.

Prejudicial interests

22. Should members with a prejudicial interest in a matter under discussion be allowed to address the meeting before withdrawing?

Members should be put in no worse position than any member of the public, for example, many council's have public speaking schemes at planning committees. However any proposals must in order to avoid uncertainty for members be compatible with the law relating to bias and pre-determination.

23. Do you think that members with prejudicial public service interests should be allowed to contribute to the debate before withdrawing from the vote?

Again, members should be put in no worse position than any member of the public. Sometimes their public service interest provides a valuable additional insight, e.g, where they are appointed to a body by the Council itself. Any proposals must in order to avoid uncertainty for members be compatible with the law relating to bias and pre-determination, otherwise confusion will reign.

Registration of interests

24. Should members employed in areas of sensitive employment, such as the security services, need to declare their occupation in the public register of interests?

Yes, unless it is very tightly defined and the information is required to be registered with the Monitoring Officer.

25. 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?

We do not believe there should be any necessity to register membership of private clubs and organisations. What does 'near' mean –as the crow flies or by road, travelling time and how far?

Gifts and hospitality

26. Should the Code of Conduct require that the register of gifts and hospitality be made publicly available?

Yes.

27. Should members also need to declare offers of gifts and hospitality that are declined?

Yes

28. 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?

Ideally we believe a series of gifts from the same source should be declared. It could be defined by aggregating the value of gifts with a declaration required once the total gross over the declaration threshold of £25, but there would need to be a time limit on the period of aggregation.

29. Is £25 an appropriate threshold for the declaration of gifts and hospitality?

Yes

General Comments

We would also like to add that we fully support the views expressed by the Committee on Standards in Public Life that "the ethical framework must move to locally based arrangements for the initial handling, investigation and determination of all but the most serious cases. Only by local ownership and involvement can issues of ethical organisational culture be properly addressed and the overall regulatory framework for standards in local government made proportionate and strategic.'

We would also like to add that whilst we recognise the improvements made by the Standards Board in the average time taken to investigate complaints. The whole process remains far too lengthy and the level of stress on members under investigation should not be underestimated. A locally based system would avoid the unacceptable delays in resolving complaints.

Yours sincerely,

H J Pollard (Miss)
for County Solicitor & Assistant Chief Executive