

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM

REPORT TO CABINET

4 DECEMBER 2008

**REPORT OF
CORPORATE
MANAGEMENT TEAM**

COUNCIL DECISION/

Corporate Management and Finance - Cabinet Member - Councillor Laing

CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES - A CONSULTATION

1. Summary

This report provides details of, and invites views on the above consultation paper published on the Communities and Local Government website on 1 October 2008. The paper sets out proposals for revising the current Code of Conduct for local authority members, the General Principles of Conduct and for the introduction of a model code of conduct for local government employees.

2. Recommendations

It is recommended that:-

1. the report and related consultation paper be considered;
2. views are provided on the specific questions summarised at Annex A to the paper; and that
3. an appropriate response is made to Communities and Local Government as outlined in paragraph 16 of the Cabinet report.

3. Reasons for the Recommendations

To ensure that the Council's views on the consultation paper's proposals are submitted to Communities and Local Government before the 24 December deadline.

4. Members Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so

significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.

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Corporate Management and Finance – Lead Cabinet Member – Councillor Laing

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CONSULTATION**

SUMMARY

This report provides details of, and invites views on the above consultation paper published on the Communities and Local Government website on 1 October 2008. The paper sets out proposals for revising the current Code of Conduct for local authority members, the General Principles of Conduct and for the introduction of a model code of conduct for local government employees.

RECOMMENDATIONS

It is recommended that:-

1. the report and related consultation paper be considered;
2. views are provided on the specific questions summarised at Annex A to the paper; and that
3. an appropriate response is made to Communities and Local Government as outlined in paragraph 16 of the Cabinet report.

DETAIL

Background

1. The White Paper, Strong and Prosperous Communities and the Local Government and Public Involvement in Health Act 2007 introduced a more locally based conduct regime, including a new model code of conduct for local authority members.
2. The Standards Board for England is now a light touch regulatory body, providing advice and guidance to local authority standards committees which deal direct with complaints about member conduct.

The Consultation Paper

3. The Communities in Control: Real people, real power White Paper seeks to build on these new arrangements and the consultation paper, a copy extract of which is attached to this report at **Appendix 1**, invites views on proposals:-
- revising the current model code of conduct for local authority members;
 - regarding associated changes to the general principles of conduct; and on proposals;
 - for a new statutory model code of conduct for local government employees.

Code of Conduct for Members

4. A copy of the current model code is included for ease of reference in the attached extract from the consultation paper.
5. Chapter 2, pages 8 to 15 of the paper, set out the proposed changes in respect of the model code. These can be summarised as follows:-
- (i) making a new model code Order to replace the existing one.
 - (ii) dividing the new model code into two parts, the first dealing with members' conduct in an official capacity, the second dealing with conduct in a non-official or private capacity.
 - (iii) including in the non-official or private capacity section a provision prohibiting conduct that would constitute a criminal offence.
 - (iv) defining criminal offence as any criminal offence for which a member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.
 - (v) defining official capacity as being engaged in the business of an authority including the business of the office to which a member is elected or appointed, or acting, claiming to act or giving the impression that they are acting as a representative of their authority.
 - (vi) providing that conduct constituting a criminal offence in a foreign country would be covered by the new code, provided it would also constitute a criminal offence if committed in the UK.
 - (vii) providing that wherever a criminal offence is committed, a conviction in the country where it was committed would be required before the code of conduct could apply
 - (viii) confirming that complaints about member conduct in a non-official capacity involving criminal activity would need to be referred to and dealt with by standards committees, but providing that a standards committee's investigation process would have to cease until the related criminal process had ceased.
 - (ix) making paragraph 12(2) of the current model code mandatory for parish councils.

- (x) clarifying that paragraphs 8(1)(a)(i) and (ii) referring to other bodies do not include a member's own local authority.
 - (xi) clarifying that gifts and hospitality (of at least £25 estimated value) must be registered in the members' register of interests.
 - (xii) clarifying that a prejudicial interest exists where an item affects a member's financial position (or a relevant persons) or it relates to the determining of any approval, consent, license, permission or registration in relation to the member (or a relevant persons); that determining includes variation, attaching, removing or amending conditions, waiving or revoking applications; that a member does not have a prejudicial interest when giving evidence at a standards committee hearing regarding an allegation about a member's misconduct.
 - (xiii) providing that re-registration of members' existing interests would not be required under the new model code.
 - (xiv) requiring members to give a written undertaking to abide by the new model code within two months from the date of their authority's adoption of the new code and that failure to do so will mean they cease to be members of the authority.
6. Questions 1 to 9 at Annex A to the paper relate specifically to the issues raised in the previous paragraphs of this report.

General Principles of Conduct

7. The ten general principles of conduct are set out at paragraph 2.36, pages 15 and 16 of the consultation paper.
8. The proposals are to:-
- (i) make it clear which of the principles govern conduct in an official capacity, and which govern conduct in a non-official or private capacity where the member's conduct would constitute a criminal offence, and to
 - (ii) provide that the ten existing principles apply to official capacity, and to add a new eleventh principle concerned solely with conduct in a non-official capacity involving a criminal offence (principle 11 - Members should not engage in conduct which constitutes a criminal offence).
9. Questions 10 to 12 on page 17 of the consultation paper relate to the above proposals and also those regarding the definitions and use of "criminal offence" and "official capacity" in the context of the General Principles of Conduct.

Model Code of Conduct for Employees

10. The proposals in Chapter 2 of the paper, pages 18 - 25, concern a new model code of conduct for local government employees. This follows on from a Government consultation in August 2004.

11. Many local authorities already have a code for employees in place (Stockton's code is attached at **Appendix 2** to the report) and the question (13) is asked whether a mandatory model code is needed?
12. The paper also proposes that:-
- (i) the model code will be incorporated into employees' terms and conditions of employment.
 - (ii) it could be augmented on a local basis if authorities so wished.
 - (iii) it would not be applied to employees in professions which already have their own code - firefighters, teachers, community support officers and solicitors etc (the paper asks if there may be others to whom the code should not be applied?).
 - (iv) there should be a two tier model code based on the Welsh employees' code of conduct order and the Members code of conduct - with the first tier provisions (based on the Welsh code) applying to all qualifying employees and the second tier (based on the members' code) applying to senior officers or those carrying out delegated functions.
 - (v) views should be invited on two alternatives for selecting qualifying employees to whom the core values and also some of the restrictions from the members' code should apply - the first is creating a list of employees based on posts which are politically restricted under section 3 of the Local Government and Housing Act 1989, and the second is creating a list based on those officers who perform functions delegated to them by members under section 101 of the Local Government Act 1972.
 - (vi) the core values (11) should be those specified at pages 20/21 of the paper, and that the additional values for qualifying employees (4) should be those set out on page 22 of the paper.
 - (vii) qualifying employees should only be required to register interests where there are clear grounds for concern that such an interest could give rise to accusations of partiality in decision-making and working practice - being as follows:-
 - The employee's membership, or position of control or management, in bodies exercising functions of a public nature (that is, carrying out a public service, taking the place of a local or central governmental body in providing a service, exercising a function delegated by a local authority or exercising a function under legislation or a statutory power).
 - Any business the employee might own or have a share in, where that shareholding is greater than £25,000 or have a stake of more than 1/100th of the value or share capital of the company.
 - Any contracts between the authority and any company the employee has an interest in, as above.
 - Any land or property in the authority's area in which the employee has a beneficial interest.

- (viii) qualifying employees may seek to exempt their interests from the register if they consider, in discussion with the Monitoring Officer, that having this information on the register might put themselves or others at risk.
- (ix) a prejudicial interest is considered to be a matter which affects the qualifying employee's financial interest or relates to a licensing or regulatory matter in which he or she has an interest and where a member of the public, who knows the relevant facts, would reasonably think that his or her personal interest is so significant that it is likely to prejudice his or her judgement of the public interest.

A prejudicial interest in a licensing or regulatory matter may stem from a direct financial interest or from a more tangential interest, where for instance approval for a licence may affect a body with which the qualifying employee has a personal interest or will affect him or her personally.
- (x) where a prejudicial interest is considered to exist, it should be declared and the employee should take steps to avoid influential involvement in the matter. Where this is not possible their prejudicial interest should be made clear.
- (xi) local authorities should decide, when agreeing contracts, partnership terms and conditions of employment, if and how the employees' code, in whole or part, should apply.
- (xii) it seems reasonable for the employees' code to apply to parish council employees, but that parish councils should identify any particular aspect of the code that might present difficulties and how they could be overcome.

13. Questions 13 to 22 on pages 18 to 25 of the paper relate specifically to these highlighted issues.

Consultation Replies

- 14. Views on the consultation paper are invited by Wednesday, 24 December 2008. Comments are particularly welcomed from local authority members, Monitoring Officers, employees, national representative bodies, local government partners and trade unions.
- 15. The Standards Committee considered the consultation paper at its meetings on 23 October and 20 November 2008. Details of the Committee's views will be provided as an addendum to the report (**Appendix 3**). Comments from any other consultees will also be brought to Cabinet's attention at the meeting. The consultation paper will also be reported to the Audit Committee on 8 December. The Committee will be made aware of Cabinet's views.
- 16. As the consultation period expires on 24 December, it will not be possible to await full Council's consideration of Cabinet's views on the paper's proposals. It is, therefore, proposed to forward an appropriate response to the consultation prior to the deadline, making it clear however that further comments may arise from the next full Council meeting on 21 January 2008.

Post Consultation

- 17. The Government is minded, subject to the consultation responses, to implement the proposals so that they become effective in line with the 2009 local government

elections (these have been moved to 4 June 2009, the date of the European Parliamentary elections).

FINANCIAL AND LEGAL IMPLICATIONS

Financial

18. There are no direct financial implications arising from this report. Costs arising from considering, reporting, consulting on and providing training in connection with new codes and principles will be met from within existing budgets.

Legal

19. The proposed new codes and principles will introduce revised conduct requirements for members and officers and a changed ethical and legal framework for the handling of misconduct allegations (eg through terms and conditions of employment and related procedures for employees).

RISK ASSESSMENT

20. Potential breaches of the Code of Conduct for members are currently assessed as a low to medium risk, with ongoing measures in place to control the risk, including training and awareness arrangements. The new proposals for the members' code arguably will provide greater clarity and assist in minimizing the risk of unintentional breaches. The position regarding risks associated with employees' activities will be reviewed in light of the introduction of a new model code.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

21. High standards of conduct are critical to effective decision-making, service planning and quality service and are crucial for each of the sustainable community strategy themes.

EQUALITIES IMPACT ASSESSMENT

22. This report is not subject to an Equality Impact Assessment. An Assessment is not considered to be required at this stage.

CONSULTATION

23. The consultation paper has been drawn to the attention of CMT; Heads of Service; Legal Services; the Corporate Governance Group; HRSG; EMT; STS; all Councillors and the Unions.
24. Reports regarding the paper are proposed to the Standards Committee (and through the Committee agenda all Town/Parish Council Clerks will be advised of the consultation paper); and the Audit Committee.

Director of Law and Democracy

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Background Papers:

The appendices to the report

Ward(s) and Ward Councillors:

Not ward specific

Property Implications:

None