

DEVON & SOMERSET FIRE & RESCUE AUTHORITY



REPORT REFERENCE NO.	DSFRA/08/28
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	18 DECEMBER 2008
SUBJECT OF REPORT	COMMUNITIES IN CONTROL: REAL PEOPLE, REAL POWER. CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES – A CONSULTATION
LEAD OFFICER	Clerk and Head of Human Resources Management and Development
RECOMMENDATIONS	<p>(a) <i>that, subject to any amendments as may be indicated at the meeting, the draft response to the Communities and Local Government (CLG) consultation document “Communities in Control: Real People, Real Power. Code of Conduct for Local Authority Members and Employees” as appended to this report be approved and the Clerk authorised to submit it on behalf of the Authority;</i></p> <p>(b) <i>that, subject to (a) above, the report be noted.</i></p>
EXECUTIVE SUMMARY	<p>The Department for Communities and Local Government (CLG) has published a consultation document on proposed changes (largely relating to conduct in a non-official capacity) to the Members Code of Conduct and on the proposed introduction of a model Code of Conduct for local authority employees.</p> <p>Responses to the consultation are invited by 24 December 2008. This report summarises the main issues of the consultation and sets out a proposed draft Authority response for consideration.</p>
RESOURCE IMPLICATIONS	Nil.
EQUALITY IMPACT ASSESSMENT	This report has been subject to initial screening which has concluded that there is no requirement for a full impact assessment. A further assessment will, however, be undertaken on any new/revised policy that may be required by CLG as a result of the outcome of this consultation.
APPENDICES	A. Draft response to the CLG Consultation on “Communities in Control: Real People, Real Power. Codes of Conduct for Local Authority Members and Employees)
LIST OF BACKGROUND PAPERS	CLG Consultation on “Communities in Control: Real People, Real Power. Codes of Conduct for Local Authority Members and Employees) – available for inspection on the CLG website:- (http://www.communities.gov.uk/corporate/publications/consultations/) OR hard copy on request to Devon and Somerset Fire and Rescue Authority Democratic Services.

1. INTRODUCTION AND BACKGROUND

- 1.1 The current ethical regime for local authorities was initially established by the Local Government Act 2000 which saw the creation of the Standards Board for England and the requirement for all local authority Members to adopt a model Code of Conduct.
- 1.2 Subsequently, in May 2007 a new Model Code of Conduct for Members was introduced as a prelude to further devolve responsibility for operation of the ethical regime.
- 1.3 More recently, the Local Government and Public Involvement in Health Act 2007 established (from May of this year) a more locally based conduct regime for Members centred on local Standards Committees receiving and determining, in the main, allegations of misconduct when measured against the Code.
- 1.4 At that time further changes to the Model Code were mooted, largely centred around the issue of Member conduct when acting in a non-official capacity.
- 1.5 The Department for Communities and Local Government has issued, at the end of October, a consultation document proposing changes (largely in relation to conduct in a non-official capacity) to the Model Code of Members Conduct and also on the proposed introduction of a Model Code of Conduct for Local Authority Employees. The provision to make such a Code is also provided for by the Local Government Act 2000 and has been subject to earlier consultations.
- 1.6 The consultation proposes some 22 specific questions and invites responses to these, and any general comments relating to the subject matter of the consultation, by 24 December 2008. This report sets out the main issues as raised in the consultation document and has attached at Appendix A a proposed Authority response to the consultation. It is suggested that, given the subject matter, the Authority may wish to invite those Independent Members of the Authority's Standards Committee in attendance at the meeting to contribute to the debate on the proposed draft response.

2. PROPOSED REVISIONS TO MEMBER' CODE OF CONDUCT

- 2.1 Chapter 2 of the consultation paper seeks views on proposals to clarify the Members' Code in its application to Members' conduct when acting in a non-official capacity (paragraphs 2.5 – 2.9; Question 1). The need to clarify what constitutes misconduct in a Member's non-official capacity arose as a consequence the Livingstone case in 2006.
- 2.2 The consultation seeks views on the definition of criminal offence and official capacity (paragraphs 2.10 to 2.14; Questions 2 and 3). "Criminal offence" is defined at Paragraph 2.10 as any criminal offence for which the 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. The intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the Code of conduct regime. This will ensure that the minor offences, for example, motoring offences, parking offences as well as cautions will not be included in the remit of the Code. Serious criminal offences, however, such as assault, harassment, fraud and offences relating to child pornography will come under the remit of the Code.
- 2.3 "Official capacity" is defined at Paragraph 2.14 of the consultation document as "being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority".

- 2.4 Views are also sought on:
- the application of the Code to Members, conduct in a foreign country, where that conduct constitutes a criminal offence in that country, but only where the conduct would also constitute a criminal offence if it was committed in the UK (paragraph 2.15; Question 4); and
 - whether, the local Standards Committee or the Standards Board (as the case may be) should cease their investigation process where an allegation involves criminal activity until the criminal process has been completed (paragraphs 2.19 to 2.21, Question 5).
- 2.5 The consultation invites views on other minor amendments to the provisions of the existing Code (paragraphs 2.22 – 2.29; Questions 6 to 8), namely:
- that Paragraphs 8(1)(a) and (ii) of the current Members Code be amended to clarify beyond doubt that these are referring to **other** bodies of which you are a Member or which exercise functions of a public nature and not the Authority itself;
 - that the current wording of paragraph 8(1)(a) be amended to clarify that a Members is required to register a gift of hospitality with an estimated value of at least £25 in his or her register of Members interest;
 - that Paragraph 10(2) be amended to remove the double negative in the current drafting so as to make it clear that a prejudicial interest exists where the business of the authority affects your financial position or the financial position of a person listed in paragraph 8 of the Code or it relates to the determining of any approval, consent, licence, permission or registration in relation to you or those persons listed in paragraph 8 of the Code.
 - that the meaning of determining in paragraph 10(2)(b) (relating to approvals, consents, licences etc) clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications;
 - that Paragraph 10(2)(c) be amended to clarify that a Member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority's standards committee hearing regarding an allegation that a Member of the authority had failed to comply with the Code.
- 2.6 It is proposed that the new Code will take into account any existing registration of Members' interest. This will ensure that Members who have already registered their interests in line with the 2007 model Code do not have to repeat the process when the revised model is introduced. It also proposes and invites views on (Question 9) a timescale of two months' during which a Member must give an undertaking to observe the Member's Code, starting from the date the authority adopts the Code.
- 2.7 Revisions are also proposed to the ten General Principles that underpin the provisions of the Members' Code. These principles are currently set out in the Relevant Authorities (General Principles) Order 2001 and are in turn based on the seven principles of public life set out by the Committee on Standards in Public Life (the "Nolan Committee"). The proposed revisions seek to make clear which principles govern the conduct of Members when acting in an official capacity and in a non- official capacity and invite views on:
- the inclusion of an additional principle that Members should not engage in conduct which constitutes a criminal offence (to apply specifically to conduct in a Member's non-official capacity - Question 10); and

- the definition of both “criminal offence” (Question 11) and “official capacity” (Question 12) to apply to this new General Principle.

3. MODEL CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES

- 3.1 Chapter 3 of the consultation paper refers to a Code of Conduct for local government employees (“Employees Code”). As indicated earlier, the Local Government Act 2000 ethical framework also provided for the introduction of a statutory Code for local government employees but an earlier consultation in 2004 did not progress.
- 3.2 In introducing its proposals for an Employees Code, CLG states in the consultation document that it is not intended that this should be a burden either on local authorities or employees and should not constrain an authority from developing its own Code reflecting local needs and conditions. It is proposed that authorities should be free to adopt “supplementary provisions beyond the employees’ code” to provide staff with an effective ethical framework in which to work. The implication of this, therefore, is that there will at the least be an expectation – if not a requirement – for the fundamental aspects of any Model Code produced to be adopted by each authority.
- 3.3 The consultation initially seeks views on:
- whether there should be a mandatory code of conduct for local government employees, to be incorporated into terms and conditions of employment (Question 13);
 - if so, whether this should apply to all employees or whether there are certain categories (e.g. firefighters, teachers, community support officers, solicitors) who should be exempt from the Code as they are already covered by an existing one (Questions 14 and 15). Members may wish to note, in this respect, that it is not considered that firefighters are covered by their own Code. Rather, it is considered that CLG may, here, be referring to the former Discipline Regulations which have subsequently been repealed and a new Discipline Code (based upon the ACAS model) introduced. This Code also applies to non-uniformed staff. Alternatively, CLG may be referring to the Core Values of the fire and rescue service as contained in the national Fire and Rescue Service Equality and Diversity Strategy. These values apply to all employees of a fire and rescue authority (uniformed and non-uniformed) and to elected Members. They differ, however, from those proposed in the consultation document and this issue is addressed in the proposed response.
- 3.4 A two-tier Model Employees Code is proposed for employees not currently covered by their own Code. The first tier comprises a set of Core Values (based upon the content of the Code of Conduct (Qualifying Local Government Employees)(Wales) Order 2001) to apply to all employees and covering:
- General Principles;
 - Accountability;
 - Political neutrality;
 - Relations with Members, the public and other employees;
 - Equality;
 - Stewardship;
 - Personal interests;

- Whistleblowing;
- Treatment of information;
- Appointment of Staff; and
- Investigations by Monitoring Officers.

Views are sought on whether these Core Values are correctly identified, whether any should be omitted or any additional ones included (Question 16).

3.5 The second tier (drawing upon the Members' Code) would apply only to "qualifying employees" – senior officials or those carrying out delegated functions – and would apply the following values:

- a requirement not to compromise, or attempt to compromise, the impartiality of officers of the authority;
- a requirement not to use or attempt to use their position improperly;
- a requirement to have regard to any advice on how the relevant sections of the Code apply to qualifying employees;
- a requirement to register personal interests in certain designated categories (e.g. membership or position of control or management in bodies carrying out a public service; ownership of a business or shareholdings in excess of £25,000 or 1/100th of the value or share capital of a company);
- a requirement to declare and seek to avoid influential involvement in certain prejudicial interests (e.g. a financial interest or interest in a licensing or regulatory matter which a member of the public, knowing the relevant facts, would consider so significant as to prejudice the qualifying employee's judgement of the public interest).

3.6 Authorities are invited to express views on:

- the method for determining/selecting "qualifying employees" (Question 17);
- whether there should be a requirement to publicly register certain interests (Question 18);
- what interests should be registered (Question 19);
- whether, in relation to prejudicial interests, the proposals capture the pertinent aspects of the Members' Code and whether, generally, the proposals of the Code to apply to "qualifying employees" are too restrictive (Questions 20 and 21).

3.7 Question 22 seeks views on whether the Employees Code should extend to employees of parish councils. This is not considered relevant to this Authority although Members may wish to express a view.

4. CONCLUSION

- 4.1 This report aims to summarise those salient points of the CLG consultation on proposed revisions to the Members' Code of Conduct (dealing mainly with conduct in a non-official capacity); and on the proposed introduction of an Employees Code. A suggested draft response to the consultation is attached at Appendix A and the Authority is invited to consider this, in conjunction with this report, with a view to approving a final response.

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Dear Karl,

COMMUNITIES IN CONTROL: REAL PEOPLE, REAL POWER. CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES – A CONSULTATION

This document was considered recently by the Devon and Somerset Fire and Rescue Authority which has authorised me to submit the following response on its behalf. This sets out views in relation to the specific questions raised in the document which it is hoped you will find helpful.

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?

Yes, but only to the limited extent proposed in the consultation (i.e. when the conduct in a non-official capacity is limited to a criminal offence as defined in the consultation).

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.

Broadly, yes. It is suggested, however, for consistency purposes that consideration should be given to extending this definition further to include:

- minor motoring offences accumulating fixed penalty notices which, when the 12 point threshold is exceeded, would automatically equate to a criminal conviction by a Court;
- other minor offences for which similar thresholds apply.

Linked to the above, it is also considered that guidance should be issued to assist local Standards Committees on what constitutes a criminal offence.

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 definition as set out at paragraph 2.14 of the consultation is broadly accepted. It is suggested, however, that accompanying guidance should clarify what test (presumably, the man on the Clapham Omnibus reasonableness test) is to be applied by local Standards Committees if and when faced with an allegation that a member has “given the impression” that they have acted as a representative of the authority.

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?

While the spirit of this is appreciated, it is contended that only a British Court of Law would really be in a position to determine whether or not a criminal offence committed abroad would equate to a criminal offence if committed in the UK. Consequently, it is suggested that – to remove any ambiguity or difficulty in interpretation for local Standards Committees – the Code should apply in instances which are criminal offences leading to convictions in accordance with the law of the particular country where the offence was committed.

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

Yes, in so far as this relates to conduct in a non-official capacity. If the misconduct was in an official capacity, it is contended that it should be permissible to proceed with the ethical investigation as soon as possible to enable the authority concerned to take action sooner rather than later and thereby minimise the potential for any reputational damage accruing from delays which could result in a public perception that the misconduct alleged was at best considered trivial or at worst condoned by the authority in question.

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 proposed amendments are accepted as providing the clarity/consistency required, especially the amendment proposed to paragraph 10(2) of the code.

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?

Subject to incorporation of the earlier issues (and provision of appropriate guidance), it is felt that the amended Code should be sufficient.

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.

It is felt that the matters General Obligations as set out in 3 to 6 inclusive of the code sufficiently define acceptable conduct in an official capacity.

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?

This is considered to be sufficient and is in line with the timescales in the original legislation.

Question 10 Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

Yes. If the code is to be revised to reflect what constitutes misconduct in a non-official capacity then it is only consistent that the general principles from which the code derives should be similarly revised.

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?

In line with the response to Question 10 above, it is puzzling why the definition proposed in paragraph 2.39 of the consultation, in relation to the General Purposes Order, differs (albeit subtly) from the definition proposed to be applicable to the code and as set out at paragraph 2.10 of the consultation. For the sake of consistency, it is suggested that the same definition should apply to both and that this should be the definition proposed to apply to the code as this is slightly more expansive in its explanation.

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

Yes, as this is consistent with the definition proposed for the code (see responses to Questions 10 and 11 above).

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?

Given the nature of public authorities, it is difficult to argue against the rationale for an Employees' Code of Conduct. The introduction of a Model Code would at least introduce some degree of consistency for all local authorities. It should be borne in mind, however, that all authorities have representative bodies (in the case of a combined fire and rescue authority such as Devon and Somerset, four – the Fire Brigades Union; the Retained Firefighters Union; the Fire Officers Association; and UNISON) each of which has a remit, to a greater or lesser degree, involving consultation/negotiation on terms and conditions of employment. The perceived imposition of a “mandatory” Code, to be incorporated into terms and conditions of employment, could create industrial relation tensions.

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

This authority is unaware of any specific Code of Conduct applying to firefighters. CLG is asked, therefore, to indicate where/what this Code is. In the absence of this, it is suggested there is no rationale as to why any Model Employees Code should apply to firefighters.

That having been said, this Authority has adopted the Core values for the Fire and Rescue Service. These are applicable to all fire and rescue service staff (both uniformed and non-uniformed) and elected Members and are contained in the national Fire and Rescue Service Equality and Diversity Strategy which every fire and rescue authority is required to implement by virtue of the current Fire and Rescue Service National Framework 2008-11. This Framework is, in turn, statutorily backed by the Fire and Rescue Services Act 2004. These Core Values are not inconsistent with the Core Values proposed by the current consultation document

It is suggested, however, that the “Core Values” as set out in the consultation document might more effectively be described as “Core Standards”. It is proposed that this latter terminology is used in any employees code to be introduced to avoid any possible confusion. Subject to this and to the points already raised in response to both this question and question 13 above, this Authority can see no reason why the proposed Model Code should not apply to employees of fire and rescue authorities – both uniformed and non-uniformed.

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

We are not aware of any other category of employee within the fire and rescue service in respect of whom it is not necessary to apply the Code – see answers to Questions 13 and 14 above.

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?

This Authority has made representations in previous consultation responses to express its view that the current rules on political neutrality/restriction – in so far as a salary limit is applied – are outdated. The governing factor in determining a “politically restricted” post should be the nature of that post - i.e. whether there is the potential to significantly influence public opinion – rather than an arbitrary salary threshold.

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 delegation model would seem more appropriate given the proposed values for qualifying employees. Also, political restriction is already accounted for in the core values (Core Standards) that it is proposed should apply to all employees although, in this respect, reference is made to the answer to Question 16 above on the need to rethink how political restriction is determined.

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

Given the nature of public service, this would seem consistent with the requirement for elected Members’ but should only apply to qualifying employees as defined.

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?

It is suggested that the criteria of interests to be registered should be expanded to include a requirement to register involvement in services which are the same as, similar or related to the activities of the employing fire and rescue authority or which may conflict in any way with its interests.

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?

Subject to the incorporation of the additional criteria, it is felt that the section to apply to qualifying employees captures all pertinent aspects of the Members’ Code.

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?

It is felt that there are not too many restrictions and that all are relevant – see also, however, answer to Question 19 above.

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

This is not considered relevant to fire and rescue authorities.

Yours sincerely

Mike Pearson
Clerk to the Authority