



STANDARDS COMMITTEE  
3 November 2008

**PROPOSED REVISIONS TO THE CODE OF CONDUCT FOR  
COUNCILLORS**

**PURPOSE OF REPORT:** eg to note/to decide

To agree a response to the consultation paper issued by Communities and Local Government on 1 October 2008 on proposed revisions to the model code of conduct for councillors. The principal proposed change intends to clarify the application of the code to councillors' acting in a non-official capacity.

**INTRODUCTION:**

1. A new model code of conduct for councillors was issued on 3 May 2007. This revised the original code of conduct and restated the standards of conduct expected of councillors and co-opted members of local authorities. As required, the Council adopted a code of conduct, incorporating the mandatory provisions of the model, with effect from 1 October 2007.
2. The government had intended that some provisions of the code should apply to the conduct of councillors in their private lives. However in the Livingstone judgment in 2006 the Court concluded that section 52 of the Local Government Act 2000 required that a Councillor undertook to comply with the provisions of the Code in performing his or her functions as a Councillor and not therefore when acting in a private capacity. As a result, the new code applies only to the conduct of a councillor when he or she is acting in that role or holds himself or herself out as so acting. The Local Government and Public Involvement in Health Act 2007 amended the 2000 Act and government is now seeking to ensure that some provisions of the code apply to councillors' conduct, no matter where it occurs.
3. The government considers that certain behaviour can have an adverse effect on the level of trust in councillors and local government as a whole, whether that behaviour occurs in public or private life. The Department for Communities and Local Government has, therefore, published a consultation paper on proposals to bring behaviour that would constitute a criminal offence into the ambit of the code, whether that occurs in public or private life. A number of other minor drafting amendments are proposed to clarify various existing provisions of the code.
4. Under the proposals, the code would be restructured by dividing it into two sections. The first would deal with conduct when acting in an official capacity and reflect what is in the current code. The second section would deal with conduct in councillors' non-official capacity.

**APPLICATION OF THE CODE OF CONDUCT TO NON-OFFICIAL ACTIVITY:**

5. The government intends the code to apply explicitly to councillors acting in a non-official capacity where their conduct would constitute a criminal offence and proposes the inclusion of the following provision:

“Members must not bring their office or authority into disrepute by conduct which is a criminal offence.”
6. For the purposes of the code, criminal offence would be defined as any criminal offence for which the councillor has been convicted in a criminal court, but for which there is not an opportunity of paying a fixed penalty instead of facing a criminal conviction. This would exclude minor offences, such as motoring, parking and litter offences, cautions and orders falling short of a conviction by a court from the remit of the code. A criminal conviction in a foreign country would come within the remit of the code, where it would also constitute a criminal offence in the UK.
7. Official capacity would continue to be defined as being engaged in the business of the council, including the business of the office to which the councillor has been elected or appointed, or acting, claiming to act or giving the impression that the councillor is acting as a representative of the council.
8. The conviction itself would not trigger a Standards Committee determination and in accordance with existing practice, it is proposed that investigations into allegations regarding councillors’ conduct in a non-official capacity would only arise in response to a written allegation being submitted to the standards committee. Where an allegation involves criminal activity being investigated by the police or prosecuted through the courts, any standards committee procedures would cease until the conclusion of the criminal justice process.
9. The code currently incorporates ten general principles, based upon the principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the code, which must be consistent with them. The government proposes to amend the code to make clear which principles govern the conduct of councillors when acting in an official capacity and which apply when acting in a non-official capacity (where the conduct would constitute a criminal offence).
10. The existing ten principles would be applied to councillors acting in an official capacity and the following new principle would be specified as applying when acting in a non-official capacity:

Duty to abide by the law

Members should not engage in conduct which constitutes a criminal offence.
11. In connection with these new provisions, it should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by Section 80 of the Local Government Act 1972, with the councillor being automatically disqualified from office for five years.

**OTHER AMENDMENTS TO THE CODE OF CONDUCT:**

12. The government is seeking views on a number of other drafting changes to the existing code, as summarised in the following paragraphs.

**Membership of Other Bodies**

13. Paragraphs 8(1)(a)(i) and (ii) of the code state that a councillor has a personal interest in a matter being considered by the Council if it relates to a body exercising functions of a public nature of which they are a member. Whilst this seems obvious, it has been suggested that the code should be amended to clarify beyond doubt that this does not include the council itself.

**Personal Interests**

14. Paragraph 8(1)(a) of the code lists the circumstances in which councillors would have a personal interest in the business of the council. This includes business affecting the interests of any person from whom a councillor has received a gift or hospitality with an estimated value of at least £25. Paragraph 13 of the code requires that councillors register details of interests falling within the categories set out in paragraph 8(1)(a).
15. It has been suggested that paragraph 8(1)(a) should clarify that a councillor is required to register a gift or hospitality with an estimated value of at least £25. There is no reason to object to this clarification, but the Council has always interpreted the existing code in this way.

**Prejudicial Interests**

16. Paragraph 10(2) of the code states that a councillor with a personal interest does not have a prejudicial interest in a matter if it:
- (a) does not affect their financial interests or those of associated persons or bodies; and
  - (b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to them or an associated person or body.
17. It is suggested that the double negative in the above provisions should be removed to state that a councillor does have a prejudicial interest if it affects their financial interests or any approval, consent etc. It is also suggested that the meaning of determining in paragraph (b) above could be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications etc.
18. A further suggestion is that paragraph 10(2)(c) could be amended to state that a councillor would not have a prejudicial interest in a matter when giving evidence at a standards committee hearing regarding an allegation of misconduct.

**CONCLUSIONS:**

19. The proposals would mean that conduct which constitutes a criminal offence would be a breach of the Code as evidenced by the criminal conviction of a councillor in the courts, no matter where the offence had been committed.
20. The other drafting amendments to the code are intended to clarify various existing provisions.

**RECOMMENDATIONS:**

The Committee is invited to note the proposed changes to the code of conduct for councillors and, if it so wishes, to respond to the consultation paper issued by Communities and Local Government.

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**Sources/background papers:** Communities and Local Government Consultation Paper, October 2008

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