

Standards Committee – 3 December 2008

Minutes of a meeting of the Standards Committee held in Committee Room 1, The Deane House, Belvedere Road, Taunton on Wednesday, 3 December 2008 at 10.30 a.m.

Present: Mrs A Elder (Chairman)
Councillors Mrs Allgrove and House
Mrs J Hoyle, Mr R Macey, Mr L Rogers and Mr B Wilson

Officers: Mrs T Meers (Monitoring Officer) and Mr R Bryant (Democratic Services Manager)

50. Apologies

Mr M Stanbury (Vice-Chairman), Councillor Slattery and Mr M Marshall.

51. Minutes

The minutes of the previous meeting of the Committee held on 21 October 2008 were taken as read and were signed.

52. Declaration of Interest

Councillor Mrs Allgrove declared a personal interest as Chairman of the Somerset Association of Local Councils.

53. Consultation Paper - “Communities in control : Real people, real power. Codes of conduct for local authority members and officers”

Reference Minute No 48/2008, submitted for information and discussion a Consultation Paper that had been received from the Department of Communities and Local Government (DCLG) titled “Communities in control : Real people, real power. Codes of conduct for local authority members and officers”.

Councillor Mrs Allgrove commented as to the length of time it had taken the DCLG to come forward with this long promised revised Code of Conduct. She hoped the Code this time would include Clerks to Parish Councils.

The Consultation Paper which had been sent to all Local Authorities contained a number of questions the DCLG wished to receive responses upon.

To assist the Committee, the Monitoring Officer Mrs Tonya Meers, had drafted replies to most of the questions and these were submitted for consideration.

Whilst Members felt that most of the draft responses were acceptable, it was felt that:-

- In respect of Question 4, it was agreed that the wording of this response should be tightened to define the types of crimes committed abroad where the Members Code of Conduct would be breached. The Members also felt that the definition of ‘criminal offence’ should be tighter;
- It was agreed that the response to Question 5 should be modified to say that before a Standards investigation proceeded, close liaison with the Police would be necessary to ensure that any parallel Police case would not be prejudiced. Each instance would need to be considered on a case by case basis and if it was decided the Standards investigation could not proceed, the complainant would have to be informed;
- With regard to Question 9, there was discussion around the timescales and it was agreed that there should be a timescale for the Code to be adopted as there was in 2007.
- With regard to Question 20, Members felt the response should be strengthened to request that the same provisions relating to prejudicial interests should apply to both Members and officers; and
- In the reply to Question 22 it was felt that the reference to “employees of Parish Councils” should refer to the Clerks.

During the discussion of this item clarification was sought as to what would happen if a Local Authority did not voluntarily adopt the new Code of Conduct. Mrs Meers confirmed that mandatory adoption would ensure that the provisions of any new Code were implemented.

The responses to the 22 questions contained in the DCLG Consultation Paper, together with those from the other five main Local Authorities in Somerset would now be considered by the Monitoring Officers before a joint response was sent to the Government to meet the 24 December 2008 deadline.

(For the information of Members of the Committee, a revised copy of the questions and the agreed responses is attached as an appendix to these Minutes.)

54. Visits to Parish Councils

Mr Rodgers reported on a recent “goodwill” visit he had made to one of the Parish Councils. He had not been well received, had been given no opportunity to say why he was in attendance at the meeting and had detected quite a strong mood against the whole concept of maintaining proper standards in public life.

The Chairman considered this to be quite worrying particularly as it also

appeared that over half of the Parish Councillors had not benefited from the Code of Conduct training David Greig, the Parish Liaison Officer, had delivered to this particular Parish Council last year.

Mrs Meers confirmed that she would speak to Mr Greig on his return from holiday to see how best this serious matter should be addressed.

55. Date of the next meeting

Members felt that the next scheduled meeting on 13 January 2009 would be too close to this current meeting. It was therefore agreed that the next meeting should be re-arranged for early February instead. Tuesday, 10 February 2009 at 2.15 p.m. was suggested as a possible date but this would be confirmed in due course.

(The meeting ended at 11.52 a.m.)

Communities in Control: Real People, real power

Codes of conduct for local authority members and employees

A consultation

List of consultation questions

Chapter 2: Code of Conduct for Local Authority Members

No	<u>Question</u>	No Comment	Agree	Disagree	Comment
1.	Do you agree that the Members' Code should apply to a Member's conduct when acting in their non-official capacity?		Agree		Agree that the code should apply to Members conduct in their private life as the public expects their elected Members to be upstanding members of the community. Obviously there are degrees of behaviour that the public would accept and this should be reflected in the code, for example one minor speeding ticket would not be sufficient to be a breach of the Code but a flagrant disregard of the parking restrictions such as failing to pay and display and therefore accruing tickets in the Borough could be seen as a blatant disregard for the authority they represent.

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.			Disagree	<p>The current definition in the Local Government and Public Involvement in Health Act 2007 means that it is conduct which would constitute a criminal offence and this suggests that there does not have to be a conviction but the behaviour would be a criminal offence. This would conflict with the proposals of the issue of fixed penalty notices (FPNs) not being a breach of the code, for example fly-tipping would be behaviour which would constitute a criminal offence but a FPN can be given therefore is there a breach of the Code or not? Also there would be the issue of the reputation of the Member to consider as a Member caught fly-tipping would not be deemed to be appropriate behaviour by the public.</p> <p>Should the test therefore be 'does the behaviour of the Councillor impact on their work or image as a Councillor?'</p>
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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.		Agree		<p>There could be some confusion here given the intention to make some behaviour a breach of the Code when a Member is not acting in his/her 'official capacity'. It might be easier just to say that the whole Code applies to a Member full stop and not differentiate between acting in official capacity or not. However the definition is fairly clear.</p>
4.	Do you agree that the Member's Code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?			Disagree	<p>There are some offences which could easily be committed abroad which would make that Councillor unsuitable to be a Councillor, for example child related crimes. In addition, with the advance of the internet an offence could be committed in this country but tried abroad, for example internet hackers.</p> <p>It is felt that the Code should be applied even if the offences are committed abroad. In addition it is also felt that the definition of what is a criminal offence should be tighter.</p>

5.	Do you agree that an ethical investigation should not proceed until the criminal process has been completed?			Disagree	<p>There is very often a delay between the offence being committed and the conviction and therefore there may be times when it would not be appropriate for that Councillor to remain in office or not be dealt with under the Standards process. Obviously no Standards Investigation should interfere with a criminal investigation but it should be recognised that the burden of proof is different in civil proceedings and therefore the conduct of the Member may or may not amount to a criminal offence but should still be dealt with under the Standards Regime. In addition, it is possible that a Member could be subject to an injunction for harassment in the civil court but may not have been convicted of a criminal offence. Therefore it is felt this should be dealt with on a case by case basis in order to assess whether the Standards Process can proceed.</p>
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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?		Agree	<p>Agree with the suggestions made in the consultation document at paragraphs 2.28 and 2.29.</p> <p>With regard to the registration of interests, this Council would agree with this approach although we do as a matter of course ask Members to update their register every May in any event.</p>
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 reason why you hold this view?		Agree	<p>The issue of Executive Members having a prejudicial interest at overview and scrutiny is unnecessary. These are public meetings and the Executive Members are not involved in the decision making process. They may be there to give evidence or comment but sometimes they find it useful to attend to hear the debate which helps when the item comes back to the Executive for a decision as they get the full flavour of the debate and in some cases public opinion. Therefore would suggest that paragraph 11 is deleted completely.</p>

8.	Are there any aspects of conduct in a Members' official capacity not specified in the Members' Code that should be included? Please give details.		Agree		Some clarity for Members when they are making representations in their private capacity. Members are currently in a dilemma if they make neighbour representations, for example in a planning matter because they could be accused of improper use of their position to influence but if they do not declare they are a Member they could be accused of acting in an underhand manner. This could be resolved simply by providing that the Member discloses a personal interest.
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?		Agree		This is a new Code of Conduct with a slightly different emphasis as it now covers Members' private lives and therefore it is only right that they agree to continue to sign a new Code as was the case in 2007. In addition the wording in the 2000 Act requires Members to observe the Code of Conduct "for the time being" and therefore it is possible that interpretation of that could mean that it is an undertaking to observe the Code that is in force at that time.

10.	Do you agree with the addition of this new general principle, applied specifically to conduct in a Member's non-official capacity?			Disagree	It is felt that this is unnecessary as it is already covered under the principles of honesty and integrity and duty to uphold the law.
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?			Disagree	As above, it is felt that a change is not necessary but if it is then it should be defined as criminal conduct "which compromises the reputation of the Member's office or authority, or their ability to perform their functions as a Member".
12.	Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?			Disagree	It is not clear why this is needed as there is now an emphasis on a Member's private life as well as them acting in their official capacity.

Chapter 3: Code of Conduct for Local Government Employees

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?		Agree		<p>This would allow for a consistent minimum approach for local government which employees and the public could understand. However most authorities, including this one does have a comprehensive Code of Conduct already therefore would suggest that a Mandatory Code should be the minimum that an Authority should have in place but it should not prevent them having one which goes further than the Mandatory Code if that is felt appropriate. It would be enforced through the Council's disciplinary process.</p>
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14.	Should we apply the Employees' Code to fire fighters, teachers, community support officers, and solicitors?		Agree		<p>The Code should apply to all employees in Local Government Employment.</p> <p>The Code of Conduct for employees is different to the professional codes of conduct however they should be compatible. In addition, if there was not a Code of Conduct for these professions this would cause some confusion and inequality amongst staff. This would be because they would be covered by different Codes but an employer would always want their staff to be covered by one code but would acknowledge that they are also covered by the professional codes at the same time.</p>
15.	Are there any other categories of employee in respect of whom it is not necessary to apply the Code?			Disagree	No consistency is the key.

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?		Agree		
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 selection of 'qualifying employees' should be selected using the delegation model which would mean only employees exercising delegated functions from elected Members would be included.
18.	Should the code contain a requirement for qualifying employees to publicly register any interests?		Agree		
19.	Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?		Agree		<p>There should be greater clarity on the declarations of interest.</p> <p>The first two bullet points should only apply where there is a potential conflict of interest (within the same geographical area, where there is a relationship or where there may reasonably be expected to be a relationship).</p>

20.	Does the section of Employees' Code which will apply to qualifying employees capture all pertinent aspects of the Members' Code? Have any been omitted?			Disagree	<p>The Code fails to recognise the provisions of Section 117 of the Local Government Act 1972 and therefore this should be incorporated to avoid employees have to check both the code and Section 117 which will avoid confusion.</p> <p>The Employees' Code is at odds with the Members Code on prejudicial interests as Members with a prejudicial interest have to leave the room altogether but for officers it says that "wherever possible ...take steps to avoid influential involvement in a matter". Therefore it is felt that employees should also leave the room if a matter is being debated.</p>
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?			Disagree	

22.	Should the Employees' Code extend to employees of Parish Councils?		Agree		It is felt that this needs to be tightened up and a tighter definition given. This Council feels that Clerks to Parish Councils as a minimum should be covered but that all permanent staff should also be subject to the Code.
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