

COMMENTS BY THE COMMITTEE ON THE PROPOSED REVISIONS TO THE CODE OF CONDUCT

i) To delete reference to unlawful discrimination

In a case in January 2005, the Adjudication Panel for England found that it had no jurisdiction to make findings of unlawful discrimination (this being a matter for the courts). The Government proposes to replace the provision with words prohibiting Members from doing anything that would seriously prejudice their authority's statutory duties in regard to equality. The requirement to treat others with respect would be retained.

Comment:

There can be little objection to the principle of the provision. However, proving that it has been broken is likely to be difficult in many cases.

ii) Addition of a provision prohibiting bullying

Bullying is prohibited under the existing Code by implication, and it is thought desirable that the Code should explicitly prevent bullying of other Members, of Officers, or anyone else. No definition of bullying will be included in the Code, but the Standards Board intends to publish guidance on the issue. This will make it clear that bullying can occur both from patterns of behaviour and through individual incidents.

Comment:

No objection is seen to this modification.

iii) To modify the prohibition on disclosure of confidential information

The Code currently prohibits disclosure of confidential information. This fails to take into account the full implications of the European Convention on Human Rights. It is therefore intended to allow an exemption where a Member discloses such information in good faith, reasonably, and in the public interest. The Member must not have breached any reasonable requirements of the authority (such as local protocols or procedures). The DCLG expects the Standards Board to issue guidance to authorities on the interpretation of this exemption, highlighting examples such as exposing evidence of a criminal offence, failure to comply with legal obligations, danger to health and safety, and certain other cases. It is not intended that the exemption should allow Members to plead public interest when they are really motivated by the desire to take political advantage. The Government is considering whether to amend the drafting further to make it clear that the provision about confidential information covers not only information received by a Member in his or her official capacity, but also any information, which relates to the work of the Council.

The Government asks whether the proposed text strikes an appropriate balance.

Comment:

The proposed new provision does appear to strike the appropriate balance and that the proposed drafting clarification mentioned above would be worthwhile. The clarification would remove argument and grey areas about

how exactly a Member had come by confidential information relating to the authority.

iv) Behaviour outside official duties which brings the authority into disrepute

The present Code provides in effect that a Member must not act in such a manner as to bring his or her office or authority into disrepute whether they are acting in their official capacity or not.

Doubt has been cast recently on both the desirability and the legality of provisions, which can cover all activity by a Member whether they are acting as such or not. The Government proposes to deal with the legal problem by amending the Local Government Act 2000 to make it clear that the Code can apply to private conduct. It is also minded, however, to amend the Code to provide that conduct in a private capacity is only caught if it has resulted in a conviction for a criminal offence. DCLG asks whether this is appropriate.

Comment:

Any such amendment will no doubt eventually result in instances somewhere in the country where Members are found to have brought their office or authority into disrepute, but because the behaviour is not criminal, it is not a breach of the Code of Conduct. However, the existing provision is the source of some anxiety to Members and is vulnerable to abuse by complainants. On balance, therefore, the narrowing of its scope is supported.

v) Offences committed before taking office

The Government proposes to make it clear that the 'disrepute' provision can cover circumstances where a Member committed a criminal offence before taking office, but was only convicted of that offence afterwards.

Comment:

This appears reasonable – there may be damage to an authority's reputation if there is no apparent sanction against a Member guilty of a serious offence, which only came to light after he, or she was elected.

vi) Using improper influence (paragraph 5a)

The Code prohibits Members from using their position as a Member improperly to secure an advantage or disadvantage for themselves or any other person. The Government wants to clarify this provision to make it clear that it covers unsuccessful as well as successful attempts to use a Member's position in such a way.

Comment:

No objection is seen.

vii) Use of the authority's resources (paragraph 5b)

This provision prohibits misuse of resources provided by the authority in defiance of the authority's requirements, or for party political purposes unrelated to the office. The Government proposes to expand the wording to clarify what is meant.

Comment:

No objection is seen.

viii) Compliance with the local authority publicity Code

The Government proposes to further amend paragraph 5b (about use of the authority's resources) to make it clear that Members should have regard to the Code of Recommended Practice on local authority publicity (this prohibits political campaigning with local authority publicity budgets it also provides instructions about content, style, and distribution). DCLG asks whether the Code of Recommended Practice itself stills serves a useful purpose and if so, whether it should apply to the Greater London Authority, Fire and Rescue authorities, and the National Parks authorities.

Comment:

No objection is seen to the proposed addition to the Code of Conduct. As regards the Code of Recommended Practice on publicity, Runnymede has not in the past found it to be unduly restrictive, probably because the Council seldom engages in political campaigns. It has however used the Code to argue that action taken by certain other authorities was inappropriate. The Committee expresses no view in this respect.

ix) Deletion of the duty to report breaches of the Code by others

The duty to report apparent breaches of the Code by other Members has been a source of confusion and anxiety, notwithstanding the general desirability of avoiding allegations of 'cover up'. In some authorities, it has been abused for political purposes. The Government proposes to add a provision prohibiting Members from intimidating complainants and witnesses against them or other Members.

Comment:

No objection is seen, although the proposed anti intimidation provision may be superfluous given the wording of other provisions in the Code.

x) Registration of gifts and hospitality

Although Members are obliged to notify the Monitoring Officer of gifts or hospitality received in their official capacity over the value of £25, there is no provision for this information to be noted on a public register. The Government proposes to require such gifts to be noted in the register of Members' interests. This means that such gifts would have to be declared as personal interests where relevant at Committee meetings.

Comment:

No objection is seen to making the notification of gifts transparent by having them recorded in a public register. However, the Committee would question whether the register of Members' interests is the appropriate place. It could lead to the declaration of many irrelevant matters at Committee, particularly with the proposed requirement that any gift or hospitality received up to 5 years previously should count as a personal interest. The Committee believes it would be sufficient for there to be a separate public register of gifts and hospitality.

Two secondary issues arise. The value limit of £25 to trigger the requirement for registration is modest and has not been raised since the Code was first introduced in 2001. The Committee strongly suggests this should be reviewed. Secondly, no thought appears to have been given to the position of Members who may receive many gifts in their official capacity, such as

Mayors and Chairmen of authorities. The effect of defining all these as personal interests would be very onerous. Even if they are not made personal interests, the registration requirement is still very burdensome for such Members (even a bouquet of flowers or an official dinner can easily cost over £25) and the Committee strongly urges that the registration requirement be modified for such members.

xi) Bodies influencing public opinion or policy (paragraph 8 and 15 (d))

The Government proposes to make it clear that such bodies (membership of which Members must declare in the register of interests) includes any political party. This is already what is stated in Standards Board guidance.

Comment:

No objection is seen.

xii) Extension of reference to friends and family in relation to personal interests

Members are obliged to count matters as involving a personal interest if the decision affects themselves, a relative, or a friend to a greater extent than other Council Tax payers ratepayers or inhabitants. The Government proposes to include in this list any person with whom the Member has a close personal association, but remove the present definitions of 'relative' or 'partner'. DCLG asks if the revised text adequately covers the breadth of relationships, which ought to be covered.

Comment:

Officers are unsure whether the proposal clarifies matters very much. There is probably some improvement as 'a close personal association' is a little less variable in meaning than 'friend', but even so, how close is close? Would it, for example, include a colleague who worked at the next desk, but not one who worked on the other side of the building? Also, there are many people with whom one could be said to have a 'close personal association' but with whom one would not discuss private or business matters. The Committee believes that this amendment will extend the definition of personal interests in unpredictable ways and is inherently flawed.

xiii) Definition of personal interest

At present a personal interest exists if a matter affects a Member, relative or friend to a 'greater extent than other Council Tax payers, ratepayers, or inhabitants of the authority's area'. The Government proposes to amend this to refer to a 'greater extent than the majority of other Council Tax payers ratepayers or inhabitants of the [affected] ward'. They intend to reduce the number of times on which Members have to declare interests, which are in fact shared with a large number of people.

Comment:

The intention behind the amendment is good, but it is doubtful whether in practice it will make much difference.

xiv) 'Interests' of which the Member is unaware

The Government proposes to make it clear that a Member is only deemed to be affected by a personal interest in respect of a family member, friend or person with a close personal association, if they were aware or ought reasonably to have been aware of the interest.

Comment:

This appears sensible. It ameliorates to some extent (but not completely) the concerns about the extension of interests to those held by people with a close personal association.

xv) To create a new category of 'public service interest'

The Government proposes to define such an interest as arising where a Member is also a Member of another public body. They would be required to note such interests in the register, but only declare the interest at a meeting if they actually speak. The intention is to avoid Members of other public bodies having to declare interests in possibly a number of items whether they intend to participate in the debate on them or not. There is also amendment (see below) of the rules relating to participation with prejudicial interests.

Comment:

No objection is seen.

xvi) Simplification and amendment of the list of exemptions from the need to regard oneself as having a prejudicial interest (paragraph 10)

The Government proposes to provide that certain interests are simply not prejudicial (instead of leaving it to the Member) and to add the following to the list:

- indemnities from which the Member may benefit.
- the setting of Council Tax.
- the question of whether that Member should become an honorary freeman.

The Government also proposes to allow Members to attend a hearing of a Standards Committee in order to be able to defend himself or herself. It asks whether there are any other exemptions, which should be added.

Comment:

No difficulty is seen in these amendments and many may have regarded them as self evident.

xvii) Exclusion of Members from Overview and Scrutiny Committees

The present provision excluding Members from Overview and Scrutiny Committees, where they are scrutinising decisions taken by Committees etc of which that Member is also a Member, is extended to make it clear that the exclusion covers cases where they were involved in a decision, whether or not they are now a Member of that Committee. Conversely, the exclusion is lifted if although normally a Member of the decision making Committee, the Member in question was absent when the decision was taken.

Comment:

This appears sensible.

xviii) Participation in relation to prejudicial interests

Members with public service interests will only be deemed to have a prejudicial interest if the matter under discussion relates to the financial affairs of the body concerned or to the determination of an approval, consent, etc for that body. Nor will it apply where the Member in question attends a meeting to make representations, answer questions or give evidence in relation to that body, if the Committee agrees that the Member may do so, but they would have to withdraw after giving their evidence. DCLG asks whether this relaxation is appropriate.

Comment:

This is a helpful clarification and is probably the least that should be done.

xix) Public Register of Interests

At present the whole register of Members' Interests is open to public inspection. The Government proposes to allow information to be withheld from public inspection where revealing it is likely to lead to the Member, or those with whom he or she lives, being subject to violence or intimidation. This might apply, for example, to the home address of Members who are under some kind of security threat. The Member needs to apply to the Monitoring Officer, and if the Monitoring Officer agrees, the information may be excluded from the register.

Comment:

This seems sensible.

xx) Other amendments

No comment is made.