

Communities in control: Real People, real power: Codes of conduct for local authority members and employees – A consultation

Standards Board for England response

1. In October 2008 the Department for Communities and Local Government (CLG) invited views from consultees on codes of conduct for local authority members and employees. The following is the response of the Standards Board for England to the explicit questions asked in the consultation paper and should be read in conjunction with our covering letter.

Code of Conduct for local authority members

Q1. Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

2. The Standards Board agrees that the member's code should apply to a member's conduct when acting in their non-official capacity, in limited circumstances.

Q2. 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.

3. The Standards Board see the merit in the proposed definition as a means of ensuring clarity. However, we are not sure that the proposed definition covers all of the criminal offences that CLG lists as serious. Please see accompanying letter for detailed response.

Q3. 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

4. The Standards Board believes the suggested definition for 'official capacity' needs further clarity. In particular, we believe that the definition should be clarified to ensure that suspended members interacting with the council, members discussing council business on blogs and websites and members discussing the business of the authority at political group meetings are within the scope of the code.

Q4. 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?

5. The Standards Board agrees in principle 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.
6. However, we do have practical concerns that it may be difficult for a standards committee to judge whether a criminal offence committed abroad would also have been a criminal offence if committed in the UK given different legislative codes. If the Government decides to take this approach, we will therefore consider how matters could be clarified in guidance.

Q5. Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

7. No. As worded, it would appear that the Government's intention is that a standards committee could refer a matter for investigation pending the outcome of a court case but the investigation would then be suspended until after court proceedings. We believe that the matter should not even be considered as an initial assessment by a standards committee until the criminal process has been completed. Indeed we believe that no initial assessment decision could be made until the criminal process has been completed as it would only come within the scope of the code once a conviction had been secured, so until that time the standards committee's only option would be to take no action.
8. We also believe that there is a need to clarify how it would relate to any appeals process.

Q6. 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?

9. We agree with your proposals and have a number of additional suggestions. Please see Annex A for detailed response.

Q7. 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?

10. No.

Q8. 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.

11. The Standards Board believes decisions relating to standard committee hearings should be added to the list of decision categories where members will not have a prejudicial interest. This would allow members to

attend, if they are required, as witnesses, even if they have a prejudicial interest and members of the public are not allowed to attend or speak.

12. The Standards Board also believes that provision should be made in the code, to allow a member with a prejudicial interest to attend an overview and scrutiny committee, meeting in private, in order to give evidence or answer questions. However, they should only be able to do so if they are required to do so by the committee.

Q9. 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?

13. The Standards Board proposes that the timescale, during which a member must give an undertaking to observe the members' code, be set at 28 days, from the date the authority adopts the code. We believe that the provisions for accepting office, registering interests and giving an undertaking to observe the code should be rationalised to avoid confusion.

Q10. Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

14. The Standards Board is not convinced a new general principle is necessary. We believe that the general principle that members have a duty to uphold the law at all times is sufficient.

Q11. 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?

15. Please see comments for question 2 and the covering letter.

Q12. Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

16. Please see comments for question 3.

Model Code of Conduct for local authority employees

Q13. 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?

17. Yes - the Standards Board strongly supports the introduction of a mandatory model code of conduct for local government employees.

Q14. Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

18. The Standards Board understands the intention not to cover certain employees by the Code but does not believe CLG's proposal to exclude groups where they are covered by other codes has merit. Professional codes often have different aims to that of the code proposed here and any exclusion at the least should only be where there is an existing code which covers the same minimum standards.

19. We are especially concerned at the intention to exclude solicitors. This would mean the majority of monitoring officers would not be covered. Monitoring officers, as well as being the statutory officer with duties for overseeing member conduct, often exercise considerable delegated functions on behalf of the council, such as letting of contracts, and should be covered.

Q15. Are there any other categories of employee in respect of whom it is not necessary to apply the code?

20. No.

Q16. 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?

21. The Standards Board believes that the values of political neutrality, whistle blowing and appointment of staff should be omitted. These values are already incorporated into employment contracts through other legislation.

Q17. 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?

22. The Standards Board believes that the selection of qualifying employees should be made primarily on the basis of the political restriction style model so that all politically-restricted posts are covered, but where officers with delegated powers are not covered by political restriction, they too should be covered.

23. Basing selection on either model alone would not cover all the officers that we think should be covered. Only by basing selection on a combination of both models will all appropriate officers be covered.

Q18. Should the code contain a requirement for qualifying employees to publicly register any interests?

24. Yes.

Q19. Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

25. The Standards Board believes that the criteria should broadly be the same as the criteria for registering interests in the code for local authority members. However, we agree with your suggestion that it should not be necessary to include personal details – for example your home address – on a public register unless your responsibilities relate to decisions which would affect the value of your property. Thus it would not be in the public interest for example for a director of social services to have their address publicly available. Use could be made of the current power to allow sensitive information to be withheld in certain circumstances from the members' register.

Q20. 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?

26. Yes subject to a better alignment between the registration categories. We also believe that the statement that 'only registration... in areas where there are clear grounds for concern... are required' is unclear as it does not make clear whose concerns these would be. We believe it would be better to have a closer alignment between the members' and officers' code, as members are not given the same discretion.

Q21. 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?

27. No.

Q22. Should the employees' code extend to employees of parish councils?

28. Yes. We strongly believe that the code should be extended to employees of parish councils.

29. We recognise that this may be seen as over-bureaucratic for small parishes so there may be some argument in having a modified code for parish employees limiting registration to their more limited roles. However, they are a key component of local democracy and some of the more difficult cases that the Standards Board has dealt with in the past have involved issues with the clerk's conduct. Parish employees should be covered by similar requirements as their members, so on balance, and in the interests of consistency, the Standards Board believes that there should not be a separate code for employees of parish councils.

STANDARDS BOARD FOR ENGLAND
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