

**CHERWELL DISTRICT COUNCIL**

**PERSONNEL AND GENERAL COMMITTEE  
10 December 2008**

**REPORT OF THE HEAD OF HUMAN RESOURCES**

**CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES**

**1 Introduction and Purpose of Report**

- 1.1 This paper seeks the views of the committee on the proposed introduction of a mandatory model code of conduct for local authority employees. DCLG are seeking views from authorities as part of the formal consultation process which runs until 24<sup>th</sup> December 2008.

**2 Wards Affected**

- 2.1 None.

**3 Effect on Policy**

- 3.1 Introduction of a mandatory code of conduct for employees would affect Council policy on terms and conditions of employment.

**4 Contact Officers**

- 4.1 Anne-Marie Scott, Head of Human Resources  
Liz Howlett, Head of Legal and Democratic Services

**5 Background**

- 5.1 Following the local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 established a more locally-based conduct regime for local authorities centred on local authority standards committees.
- 5.2 As part of the changes to the conduct regime, a new model code of conduct for local authority members was introduced in May 2007. The latest consultation paper, *Communities in Control* (attached), seeks views on proposals to clarify the members' code and also seeks views on the proposed introduction of a model code of conduct for local government employees. The proposal is that this would become part of the employee's terms and conditions of employment.
- 5.3 The Standards Committee have reviewed the consultation document and proposed responses to the specific questions laid out in annex a (page 26). The Standards Committee recommended that the consultation document be further reviewed by the Personnel and General Committee in relation to questions 13-22 which relate specifically to the proposed employee code.
- 5.4 Consultation comments made by the Standards Committee are below.

**6 Risk Assessment, Financial Effects and Contribution to Efficiency Savings**

6.1 The following details have been approved by Karen Curtin/Rosemary Watts.

**6.2 Risk Assessment**

There are no risks associated with this consultative report.

**6.3 Financial Effects**

There are no financial effects associated with this report.

**6.4 Efficiency/Savings**

There are no efficiency savings associated with this report.

**7 Recommendations**

7.1 The Committee is **RECOMMENDED** to comment on the proposed response and make any further responses considered appropriate.

**Consultations on the review of the Code of Conduct  
for Local Authority Members and a Code for Employees**

**Questions and Suggested Answers: Questions 1 to 12 relate to the member Code of  
Conduct and Questions 13 to 22 to the Code for Employees**

1.	Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?
	<p><i>The Council is extremely concerned at the suggestion that committing a criminal offence automatically stops you being a good councillor. The law can change very quickly and offences attracting fixed penalties can change so any attempt to pin down types of offences by the sanction available will be ineffective.</i></p> <p><i>We accept that the code could apply when acting in a non official capacity provided it is clear that the test is whether such behaviour brings the authority into disrepute, not whether a criminal offence has been committed.</i></p> <p><i>If the decision is made to link with criminal offences then the guidelines about what is a criminal offence need to be very clearly written..</i></p>
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.
	<p><i>We need to be very careful here. Is it the case that because someone has committed a crime they are unfit for public office? Should it just be 'serious' crimes which call into question how suitable someone is to represent their community? For example, only offences such as assault, harassment, grievous bodily harm (manslaughter/murder), fraud, theft, any offence relating to child pornography will be considered.</i></p> <p><i>Once you conclude that only "serious" crimes should be taken into account then arguably section 80 of the Local Government Act 1972 already covers the point?</i></p>
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.
	<i>Yes, and it is consistent with the current Model Code</i>
4.	Do you agree that the members' code should only apply where a criminal offence and conviction abroad would be a criminal offence if committed in the UK?
	<i>Yes, because it is in the UK that the member will be holding public office. However we do not agree with the principle of using criminal offences as the test. We consider the implications of this have not been properly thought through.</i>
5.	Do you agree that an ethical investigation should not proceed until the

	criminal process has been completed ?
	<p><i>Yes. It is important that the criminal process is not prejudiced or hampered by any other investigation. However, why is an ethical investigation needed? Who will make the written allegation or will the conviction in itself be the allegation? Are sanctions under the code only relevant if section 80 does not apply? Otherwise, if they are disqualified anyway, is this not superfluous?</i></p> <p><i>We believe this highlights why the code of conduct regime should not attempt to be mixed with the criminal justice system.</i></p>
6.	<p>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, could you provide details of your suggested amendments.</p>
	<p><i>Yes .</i></p> <p><i>Not entirely clear why 12 (2) was optional for parishes.</i></p> <p><i>Welcome the fact that reregistration of interests is not needed following the introduction of a new model code.</i></p> <p><i>"Nominal value" as a measure is unhelpful since it does not relate to the economic value of the share and thus is not an indication of whether the ownership will prejudice opinion. The definition should be changed to £25 000 market value.</i></p> <p><i>Beneficial trust holdings are taken as if each beneficiary is entitled to the entire trust. This means every shareholding in the trust potentially has to be declared even if the claim on it by that beneficiary is extremely small.</i></p> <p><i>Non beneficial trust holdings should only be personal interests rather than prejudicial.</i></p> <p><i>Contracts and land ownership of companies which councillors have either directly or through a trust are registrable interests. However this has to be within their knowledge and that has to be interpreted reasonably. If shares are held in large companies such as BT or Microsoft, are individual shareholders supposed to know of all those contracts and landholdings and therefore able to determine whether any are registrable?</i></p> <p><i>Please could code be reviewed to make it as simple, realistic and accessible as possible.</i></p>
7.	<p>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.</p>
	<i>No</i>

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.
	No
9.	Is the proposed 2 months timescale during which a member must give an undertaking to abide by the code, starting from the date the authority adopts the code, sufficient time?
	<p><i>Yes, but the provisions are confusing, because the declaration of acceptance of office under section 83 of the Local Government Act 1972 provides for district councillors to make their declaration within two months but for parish councillors to do so before , or at, the first meeting following their election. It would be good to have consistency.</i></p> <p><i>There also needs to be provision for further delay where it is unavoidable, which could be with the proviso that until signed cannot sit as a member.</i></p> <p><i>Could we also mention the sheer cost of the administrative process involved in ensuring a new code is signed up to. The last one was only in May 2007. We think the work, and cost, is underestimated or not appreciated.</i></p>
10.	Do you agree with the addition of this new general principle, applied specifically to conduct in a members' non-official capacity?
	<i>This is back to the issue of whether committing a criminal offence, by its very nature, makes you automatically unfit for public office. We do not think this is necessarily the case.</i>
	<p>Section 80 of the Local Government Act 1972 provides that where a custodial sentence of more than 3 months without the option of paying a fine is imposed then a member is automatically disqualified for five years.</p> <p>Please confirm that the Code will refer to this and be consistent with this provision.</p>
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?
	<i>Why is it a different definition? This is confusing and unhelpful. It needs to be clear and unambiguously defined</i>
12.	Do you agree with this definition of "official capacity" for the purpose of the General principles Order?
	Yes

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?
	<p>No .</p> <p><i>We consider that conduct is adequately covered by terms and conditions and breaches are covered by disciplinary procedures and ultimately action under employment law.</i></p> <p><i>We think it entirely inappropriate for the Standards Committee to have any jurisdiction in personnel issues.</i></p>
14.	Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?
	<i>All authorities have a code for staff which is part of their terms and conditions. Suggesting exclusions just makes it more complicated and inconsistent. It would also not help with public perception which is presumably the key concern.</i>
15.	Are there any other categories of employee in respect of whom it is not necessary to apply the code?
	<i>If some are excluded then probably a good case for excluding others, however as per the answer to 14 this just makes it confusing and inconsistent.</i>
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?
	Yes.
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?
	<i>Suggest political restriction model i.e above a certain grade together with other staff being able to opt in (because of "political sensitivity" of post).</i>
18.	Should the code contain a requirement for qualifying employees to publicly register any interests.
	<i>If there is to be a code then yes for qualifying employees. However we need to consider what sanction will be imposed where people refuse. Is this automatically a disciplinary?</i>
19.	Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
	<p><i>Requirements should be consistent with the member's code.</i></p> <p><i>There needs to be clarity about how sensitive information will be handled. There are also security issues with home addresses being made public.</i></p>
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?
	<i>Think this should be more clear cut. If there is a prejudicial interest then there is a conflict of interest and there should be back-up for someone else to deal.</i>
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.
	<i>There needs to be consistency with the members' code and it needs to be simple and accessible in the same way so the public and employees can understand it.</i>
22.	Should the employees' code extend to employees of parish councils?
	<i>No. .It is unnecessary and unworkable.</i>