

READING BOROUGH COUNCIL
REPORT BY MONITORING OFFICER

TO:	STANDARDS COMMITTEE		
DATE:	16 DECEMBER 2008	AGENDA ITEM:	2
TITLE:	INDEPENDENT MEMBERSHIP AND CONSULTATION ON AMENDED CODE OF CONDUCT FOR MEMBERS AND NEW EMPLOYEE CODE OF CONDUCT		
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1. EXECUTIVE SUMMARY

1.1 Independent Member

1.1.1 Angie Lee, MBE, resigned as one of the Committee's three independent Members in July 2008. In September 2008 I instituted a recruitment process to find a new Independent Member, in conjunction with the Chair and the Head of Legal Services. As a result of this process, we are pleased to recommend the appointment of Ms Tina Barnes to the Committee.

1.2 Amended Code of Conduct for Members

1.2.1 As part of their "Communities in Control" Agenda, the Department of Communities and Local Government (DCLG) have recently issued a consultation paper proposing the amendment of the current Code of Conduct for Members, and the introduction of a new Code of Conduct for Employees. The deadline for comments is 24 December 2008, with a view to implementation, at least of the revised Member Code, in time for the local election in June 2009.

1.2.2 The draft response is attached at **Appendix A**. This sets out and comments on the 22 questions posed in the consultation paper about the two codes.

1.2.3 With regard to the Members' Code, DCLG is proposing amendments in two areas:

- to clarify the application of the Code to Members' conduct in their non-official capacity: this follows the Collins High Court judgement with regard to Ken Livingstone in 2006
- to review the general principles governing the conduct of Local Authority members; and to add a new principle (duty to abide by the law) which would apply the Code to a Member acting in a non-official capacity and where the Member's conduct would constitute a criminal offence

1.3 New Code of Conduct for Employees

- 1.3.1 The consultation paper also makes proposals to introduce a requirement for authorities to incorporate a code of conduct for employees, based on a statutory model of conduct which would be incorporated into individual terms and conditions of employment. The Government see the code as setting out core values which should apply to all staff; in addition, the consultation paper is suggesting that the code might include certain aspects, such as the additional core values and the registration of interests, which would be limited to senior officers ("qualifying employees"). The Head of Human Resources submitted a report to the Council's Personnel Committee on 10 December 2008 on the proposed new Employee Code.

2. RECOMMENDED ACTION

- 2.1 That the appointment of Ms Tina Barnes as an independent Member of the Committee be approved, and recommended to full Council on 27 January 2009;
- 2.2 That you consider the proposed response to the DCLG consultation questions on the Member Code of Conduct, as set out in the Appendix to this report.

3. POLICY CONTEXT

Committee Membership

- 3.1 For the past year the Committee's independent Members have been Angie Lee MBE (since 2003), John Hicks, and Rev. Brian Shenton (both since 2007). The last two were appointed following a recruitment process run during the spring of 2007.
- 3.2 There is no limit to the number of independent Members that can be on the Committee, with a minimum of one quarter. The following constraints, however, apply to independent members:
- Must not have been a member or employee of the Council within five years of the date of appointment

- Must not be a relative or close friend of a Member or employee of the Council

3.3 In addition, independent Members must have filled in an application for the position, following an advertisement placed in at least one local newspaper, and must have been approved by the majority of members of the Committee. The Standards Board suggest that independent Members should:

- Be familiar with ethical dilemmas
- Have experience with committee work
- Have questioning skills
- Be assertive
- Be independent of any political party, and local government

3.4 For the 2007 recruitment process, the Committee set the following criteria in addition to the statutory requirements, which we followed in 2008:

- (1) Aged 18 or over
- (2) Close links to the local community, eg at least one of the following:
 - Resident in the Borough of Reading.
 - Working in the Borough of Reading.
 - Any other close objective link.
- (3) Not a political appointee, an MP, a current Parish, District or County Councillor in any authority or a candidate to be one, nor having been any of the above within the last 5 years.
- (4) Not having a public link to any of the political parties.
- (5) Not an employee or former employee of the Council within the last 5 years.
- (6) Not involved in the Council, eg not a major supplier, partner, contractor.
- (7) Not involved in a body which campaigns on issues involving the Council, or which promotes or opposes a point of view on a question of controversy which is identifiable as the view of one political party and not of another.
- (8) A proven track record of contribution to the community: this could involve working in the local community, eg as a GP, or having active community links via eg the voluntary or community sectors or via public bodies, or being involved with a faith group.
- (9) Be familiar with ethical dilemmas.

(10) Have good organisational skills, and experience of committee work.

(11) Have good inter-personal skills, including assertiveness, and questioning skills.

3.5 An advert was placed in the Reading Evening Post and Reading Chronicle at the end of September 2008, with a closing date of 30 October 2008. Three applications were received. The Chair, the Head of Legal Services and I invited two of the respondees to meet with us during November 2008, and are very pleased to recommend Ms Barnes for appointment as the Committee's third Independent Member.

Amended Code of Conduct for Members

3.6 During 2005 the Standards Board for England undertook a review of the national Code of Conduct for Members, an exercise which it called "A Code for the Future". This Committee submitted comments to the Board in June 2005. The Board issued its findings and recommendations for improving the Code in September 2005. The Government (ODPM) issued a discussion paper in December 2005, and a consultation paper on a draft new Model Code of Conduct in January 2007. Following consultation with members of this Committee, I responded to the consultation paper on behalf of the Council in March 2007.

3.7 The Department of Communities and Local Government (DCLG) issued the Local Authorities (Model Code of Conduct) Order 2007 on 4 April 2007. This prescribed a revised model Code of Conduct, which came into effect within three months.

3.8 At your meeting on 17 July 2007 you agreed and recommended to full Council a revised Reading Code of Conduct for Members, based on the new Model Code. This was adopted by full Council on 15 October 2007, since when all Councillors have signed to say that they will abide by it.

3.9 The current proposed revisions to the 2007 are being brought forward now to ensure its compliance with the High Court judgment concerning Ken Livingstone (the Collins judgment), and to clarify specific issues about the application of Para. 2(3) of the Code, which states that, in addition to having effect in relation to Members' conduct in their official capacity, the Code will also have effect at any other time where the Members' conduct constitutes a criminal offence for which they have been convicted.

3.10 The response to this part of the consultation paper has been based on the Committee's response to the 2007 consultation exercise.

4. CONTRIBUTION TO STRATEGIC AIMS

4.1 To support the participation of Reading people in local democracy.

5. COMMUNITY ENGAGEMENT AND INFORMATION

5.1 Not relevant.

6. LEGAL IMPLICATIONS

6.1 Part III of the Local Government Act 2000 sets out the legal framework for conduct of local government Members and officers. The Government has implemented this framework through the issue of Regulations under Section 66 of the Act, including the Local Authorities (Code of Conduct) (Local Determination) (Amendment) Regulations 2004.

6.2 The standards regime applies to voting Members of Council and Cabinet Committees, including both Councillors and non-elected Members (such as the independent Members of this Committee).

6.3 Sections 183-201 of the Local Government and Public Involvement in Health Act 2007 amended Section 58 of the Local Government Act 2000, and added new Sections 57A-C to allow the introduction of local assessment. The Government subsequently issued the Standards Committee (England) Regulations 2008 which implemented these changes from 8 May 2008.

7. FINANCIAL IMPLICATIONS

7.1 Subject of course to the number of allegations made against Members of the authority, local investigation and determination have generated and will generate additional work for the Monitoring Officer and any other officer who undertakes an investigation. In addition, the Standards Committee will be required to set up hearings to hear the individual allegations (if the MO believes that there is a case to answer), which will have associated costs of administrative support. Under the Council's scheme of Member Allowances the independent Members of the Panel may claim a daily allowance to attend these sub-committees, at a level to be determined by the MO (£32.25 a day).

8. BACKGROUND PAPERS

DCLG Consultation Paper, "Communities in Control - Codes of Conduct for Local Authority Members and Employees" (October 2008)



READING BOROUGH COUNCIL

COMMUNITIES IN CONTROL
 CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES

RESPONSE TO DCLG CONSULTATION PAPER
 OCTOBER 2008

This is the response of Reading Borough Council to the above consultation paper. It has been considered by the Council's Personnel Committee, members of the Council's Standards Committee, the Corporate Management Team, the joint trades unions, and by the three Group Leaders and Lead Councillors.

The Council adopted a local Code of Conduct for Employees in 1999, as a local agreement with its trades unions which is part of the individual employees' contract of employment and conditions of service. This was done to meet requirements specified by the National Conditions of Service for all employee groups. It also had the purpose of helping our employees to maintain fully acceptable standards of conduct by specifying and explaining the standards that the Council has set, and thereby protecting them from misunderstanding or criticism; and maintaining the Council's reputation for the high standards of its activities and the integrity of its employees at all levels.

The Council's Standards Committee also responded in some detail, in March 2007, to the Government's last consultation exercise on Amendments to the Model Code of Conduct for Local Authority Members. In general terms the Standards Committee's views have not changed. The Council has a number of reservations about the revised model code introduced in 2007. However, it recognises that the current proposed revisions to the 2007 Code are being brought forward now to ensure compliance with the High Court judgment concerning Ken Livingstone (the Collins judgment), and we do not consider that it is helpful or timely at this stage to open up the wording of the code more widely or to contemplate wholesale changes, so soon after its 2007 modification.

Chapter 2: Code of Conduct for local authority Members

1. *Do you agree that the Members' code of conduct should apply to Members' conduct when acting in their non-official capacity?*

The Council's position is as stated in our 2007 response, as follows:

Disrepute should be limited to activities undertaken in an official capacity as a councillor. Individuals who offer themselves for election to public service will

inevitably be subject to media and public scrutiny, and in a representative democracy the ultimate test for their personal fitness for office should be through the ballot box, and should not rest with tribunals composed of others who have never had to face election. Elected councillors will inevitably lead their life more in the public gaze than their fellow citizens, by personal (and voter) choice, but it is an additional infringement of their personal freedom to require them, under the Code of Conduct, to apply standards to their private lives which do not apply to their fellow citizens. Democracy is enhanced by encouraging citizens to stand for public service and scrutiny; it is not enhanced by placing more disincentives in the way of public service.

Section 80 (d) of the Local Government Act 1972 disqualified anybody from holding office as a councillor who has been convicted of any offence and has passed on him/her a custodial sentence of three months or more (whether suspended or not) without the option of a fine. The Act therefore recognises that a criminal conviction not involving a custodial sentence does not disqualify people from serving as a councillor. The Code of Conduct and Standards Board should follow the law and should not seek to introduce judgements about the appropriateness of criminal conduct outside of Section 80 (d). This should be left to the electorate.

- 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.*

The definition proposed is, "any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction"

As indicated above, we would prefer the definition to be directly related to Section 80(d) of the 1972 Act.

We agree that offences capable of attracting a fixed penalty notice, and police cautions, should be excluded.

- 3. Do you agree with the definition of "official capacity" for the purpose of the Members' code? If not, what other definition would you support? Please give details*

The term "official capacity" is already defined in para 2(1) of the Code. This is clear, and we cannot see why a new definition is required.

The proposed definition of "official capacity" as set out in the consultation paper has two distinct components:

- "being engaged in the business of your authority, including the business of the office to which you are elected or appointed"

- “or acting, claiming to act or giving the impression that you are acting as a representative of your authority”

The second component is as currently worded in para 2(1) of the code. The first is worded differently, in that it says “conduct” rather than “being engaged in”. This appears semantic. However, if the Government considers that this change of wording is necessary, then it would be sensible to amend the current wording of para. 2(1) to bring it in line.

4. *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?*

Yes

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

We disagree. The criminal process could take some time to complete, in particular if the alleged offence is serious. In such cases it would be perverse if the Councillor could continue to serve as an elected Member, even when held in custody pending trial. Such a situation will bring discredit to the authority. This will be compounded by the time taken subsequently to run the standards investigation that is likely to follow conviction.

There are two separate issues here: the position of Councillors who are charged with criminal offences which are unlikely to result in a custodial conviction and sentence of over three months, and those who are. We would suggest that the latter cases should, as a matter of course, be referred to the Standards Board for investigation, and that in such cases there should be a mechanism for the Standards Board to suspend the Member for the period between the charge being brought and the case heard; if the member is then convicted and given a custodial sentence of over three months, s/he will then cease to be a Councillor and the need for a standards investigation will end.

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?*

The consultation paper proposes the following amendments:

- Membership of other bodies -
 - Changing para 8(1)(a)(i) to make clear that it relates to membership of outside bodies, and not the authority itself
- Personal interests
 - Also changing para. 8(1)(a) to make clear that Members must register any gift or hospitality received with a value of £25 or more

- Prejudicial interests
 - Changing para. 10(2) to remove the double negative
 - Changing para. 10(2)(b) to clarify the word “determining”, to include varying, attaching, removing or amending conditions, and waiving or revoking applications
 - Changing para. 10(2)(c) to clarify that a Member will have a prejudicial interest when giving evidence before a Standards Committee
- Registration of interests
 - The new code would take into account any existing registrations made under the 2007 code.

We agree with these amendments, and welcome the last. However, see (7) below re. the registration of gifts or hospitality.

In general terms, the 2007 model code is written in less helpful terms than its predecessor, with undue stress on negative obligations (ie things Members must not do). This does not assist the clarity of the message. However, as mentioned above, the Council does not consider that this is the time to contemplate wholesale changes.

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 reasons why you hold this view?*

The Council has reservations about requiring Members to register gifts or hospitality received, as part of their register of interests. The Council would prefer the discretion to maintain a separate register of gifts (a gift book) which is published regularly, at least annually. This is for practical reasons: it is a known arrangement, which Councillors understand and follow.

8. *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.*

No

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?*

This will be at least the second time in two years that Members will have been called upon to agree to observe the code in its various iterations, and the third if the Councillor was elected in May 2007. Why is this necessary? Rather than reinforcing the importance of the code, this tinkering could have the effect of trivialising it.

In the circumstances, given the minor nature of the changes being proposed, would it not be possible to bind all Councillors through the formal and unanimous adoption of the updated code by full Council?

If this process is seen to be necessary, then a two month period, from the date the authority resolves to adopt the amended code, will be adequate.

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

We agree with the addition of an eleventh general principle, in the following proposed terms:

Duty to abide by the law

11. Members should not engage in conduct which constitutes a criminal offence.

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?

We consider that the definition of "criminal offence", to be set out in the General Principles Order, should be in line with Section 80(d) of the Local Government Act 1972. We consider that the suggested definition,, "any conduct that has resulted in a criminal conviction", is too broad, and inconsistent with the exclusions suggested in (2) above.

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

Subject to the comments made in (3) above, yes. The definition should be consistent.

Chapter 3: Model Code of Conduct for local authority 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?

The Council already has an employee code of conduct which is incorporated into employees' terms and conditions of employment.

We have reservations about such arrangements being statutory. We consider that the code should have mandatory status through being negotiated and agreed through the national joint councils, and taken forward as part of the national conditions of service. Its contents must be consistent with employment law. Therefore the code must be sufficiently flexible to allow its

terms to be modified in the light of legal changes. As demonstrated by the Collins judgment, such flexibility is lacking from a statutory code.

The model code should be capable of being incorporated into existing local codes. It should not preclude local authorities incorporating more detailed local codes into their terms and conditions of employment. The situation must be avoided of staff being employed on two codes of conduct: this will not assist good staff management or the clear understanding of disciplinary rules and procedures.

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

The Council's current local code of conduct applies to all Council staff including professional staff who are covered by their own codes. This is the mandatory model that should be followed. We consider it divisive to have different groups of staff, directly employed by the Council and working alongside each other, subject to different codes of conduct. It will not assist the even application of the Council's disciplinary rules. The code should be directly linked to the NJC negotiating the employee group's pay and conditions of service.

That said, the model code must recognise the existence of professional codes of conduct, and should not work to cut across them. The model code, local codes and professional codes should all reinforce the requirement that professional officers must work to and meet the agreed professional standards set by their professional body. Acts of professional negligence will already be treated as acts of misconduct under the authority's disciplinary procedure: the point of reference here will be the standards set by the professional body.

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

No.

We agree the basic principle of having a two-tier model code, with a second tier of senior officers who will be subject to provisions beyond the core values (the "qualifying employees").

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?

We agree with the subjects covered by the core values, ie:

- General principles
- Accountability
- Political neutrality

- Relations with members, the public and other employees
- Equality
- Stewardship
- Personal interests
- Whistleblowing
- Treatment of information
- Appointment of staff
- Investigations by Monitoring Officers.

The definitions are wordy and not user-friendly. This in part is a function of trying to anticipate the internal arrangements of individual local authorities. Most local authorities will have existing procedures dealing with many of the subjects covered by the core values. It is important that the core values reinforce these, and do not work in ways that cut across the existing procedures or confuse the interpretation of them. Less prescription, and more local flexibility with regard to wording, is essential to assist clarity, impact and application.

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?

To avoid confusion, we consider that the same definition should be used as in Schedule 1 to the Local Authorities (Standing Orders)(England) Regulations 2001 (Provisions to be incorporated into Standing Orders relating to Staff).

In Reading, this would include:

- the Head of the Authority’s Paid Service
- the Director of Education & Children's Services, the Director of Housing and Community Care (Director of Adult Social Services), and the Director of Resources (Chief Finance Officer)
- the Director of Environment, Culture and Sport
- the Monitoring Officer (Head of Central Administration)
- persons who, as respects all or most of their duties, report directly to or are directly accountable to the Head of the Council’s Paid Service
- persons who, as respects all or most of their duties, report directly to or are accountable to any of the posts listed above (other than staff whose duties are of a clerical or support nature)
- persons who, as respects all most of their duties report directly or are directly accountable to the Council or a Committee or Sub-Committee of the Council

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

The Council considers that qualifying employees should be expected to complete a register of interests, for internal management and audit reference.

We are not convinced that this should be publicly available. We consider that this could be seen as an infringement of the Data Protection Act and Human Rights Act; we are also concerned about providing opportunities for personal identity theft, in particular in relation to officers who are authorised signatories, and whose personal signature will therefore be publicly available.

Officers are not Members. They have not put themselves forward for election or appointment to public bodies. Their accountability is to their employer, and not directly to the local electorate. It is not appropriate that interests that they have in their private life should be subject to public scrutiny, any more than would be the case for senior Civil Servants.

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

If the register is to be made publicly available, it should not include a requirement for officers to disclose their home address, if in the authority. It would be perverse if officers who had exercised their rights under electoral law to opt out of the published electoral register could have their home address revealed through the registration process.

It could also expose individual officers and their families and property to harassment and physical threat or attack, in particular if they live in the authority's area.

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?

We agree with the definition of prejudicial interests, and that officers should be required to declare these. We consider that this process of declaration of interests should be done internally, and should not be required to be a public process. The internal process should be subject to external audit.

21. Does the section of the employees' code which will apply to qualifying employees place too many restrictions of qualifying employees? Are there any sections of the code that are not necessary?

We consider that the proposed requirements of the Employee Code are reasonable, and should be registered. The Council's current local code already requires officers to declare outside interests which could conflict with the Council's interests or Council policy, or with the employee's duties and responsibilities as a Council employee. Failure to do so is a breach of the code which, because the code is an integral part of the employee's conditions of employment, means that the breach consequently can be treated as a disciplinary offence.

We repeat our view that these are matters for internal declaration and management, and not for external publication. Indeed, we consider that the relationship of trust between the Council as employer and its senior staff could be adversely affected by the publication of the personal interests of staff.

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

This is not relevant to Reading.

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November 2008
3rd draft