

**REPORT FOR RESOLUTION**

**COMMITTEE:** Standards Committee

**DATE:** 17 November 2008

**SUBJECT:** Consultation Paper – Code of Conduct for Members

**REPORT OF:** The City Solicitor

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**PURPOSE OF REPORT:**

To advise the Committee of a consultation being carried out by the Department for Communities and Local Government (“the DCLG”) regarding the proposed revision of the model code of conduct for local authority members together with associated changes to the Relevant Authorities (General Principles) Order 2001, and to seek the Committee’s comments on the consultation paper and the draft response set out in the Appendix to this report.

**RECOMMENDATIONS:**

For the Committee to:

1. Note the DCLG’s consultation and provide comments on the proposed changes to the model code of conduct for local authority members and Relevant Authorities (General Principles) Order 2001;
2. Provide comments on the draft response set out in the Appendix; and
3. Delegate to the City Solicitor authority to respond to the consultation paper incorporating the Committee’s comments.

**FINANCIAL CONSEQUENCES FOR REVENUE BUDGET:**

None.

**FINANCIAL CONSEQUENCES FOR CAPITAL BUDGET:**

None.

**WARDS AFFECTED:**

All.

**IMPLICATIONS FOR:**

Antipoverty	Equal Opportunities	Environment	Employment
No	No	No	No

**CONTACT OFFICERS:**

Susan Orrell, City Solicitor x 3087 [s.orrell@manchester.gov.uk](mailto:s.orrell@manchester.gov.uk)  
Rodney Lund, Assistant City Solicitor ext 4019 [r.lund@manchester.gov.uk](mailto:r.lund@manchester.gov.uk)  
Karen Chadwick, Solicitor x 3539 [k.chadwick@manchester.gov.uk](mailto:k.chadwick@manchester.gov.uk)  
Stephen Hollard, Legal Officer, Democratic Services x 3336 [s.hollard@manchester.gov.uk](mailto:s.hollard@manchester.gov.uk)

**BACKGROUND DOCUMENTS:**

Local Government Empowerment White Paper: *Communities in Control: Real people, real power*

DCLG consultation paper: *Communities in Control: Real people, real power – Codes of conduct for local authority members and employees*  
<http://www.communities.gov.uk/documents/localgovernment/doc/562D53.doc>

The Local Authorities (Model Code of Conduct) Order 2007  
Relevant Authorities (General Principles) Order 2001

## Background

1. On 9 July 2008, the DCLG published a Local Government Empowerment White Paper, *Communities in Control: Real people, real power* (“the 2008 White Paper”) building on the work still in progress from the October 2006 White Paper, *Strong and Prosperous Communities* (“the 2006 White Paper”).
2. Following the 2006 White Paper, the Local Government and Public Involvement in Health Act 2007 established a more locally based regime for local authorities centred on local authority standards committees with the Standards Board for England (“the SBE”) adopting a new role as a light touch regulator. As part of the changes a new model code of conduct for members, the Local Authorities (Model Code of Conduct) Order 2007, was introduced on the basis that its provisions would be reviewed in light of experience of its practical operation. The Council adopted a revised code of conduct for local authority members at its meeting on 11 July 2007.
3. On 1 October 2008 the DCLG published a consultation paper, *Communities in Control: Real People, Real Power – Codes of Conduct for Local Authority Members and Employees* (“the Consultation Paper”). The Consultation Paper is one of a series of consultations following publication of the 2008 White Paper. As a result of local authority and the SBE’s experience of the operation of the revised code, part of the Consultation Paper seeks to consult on proposals to further revise the model code of conduct for local authority members (“the Code”) and to make associated changes to the Relevant Authorities (General Principles) Order 2001 (“the 2001 Order”).

4. The consultation period closes on 24 December 2008. Within 3 months of the close of the consultation the DCLG will analyse the responses and produce a summary of them. The DCLG will take account of the responses to the consultation before taking decisions on the legislation that will revise the Code and the 2001 Order.
5. The Standards Board for England has expressed support for the changes in a press release issued on 2 October 2008.

### **The Proposals**

6. The DCLG's main proposals are:
  - Clarification of the application of the Code to conduct of members in their non-official capacity, making it clear that the Code will only apply to conduct that amounts to a criminal offence.
  - To define 'criminal offence' and 'official capacity' for the purposes of the Code.
  - Standards committees and the Standards Board to cease investigations where allegations relate to criminal activity that is undergoing investigation by the police or is before the courts.
  - Amendment of the General Principles of the Code to clarify that the existing ten principles only relate to members conduct in their official capacity and introducing an eleventh principle – duty to abide by the law – that will apply to members' conduct in their non-official capacity.
  - To define 'criminal offence' and 'official capacity' for the purposes of the General Principles.

### **City Solicitor's Draft Response**

7. The City Solicitor has produced a draft response to the Consultation Paper set out in the Appendix to this report.
8. The Committee is asked to provide comments on the draft response and to delegate to the City Solicitor authority to respond to the Consultation Paper incorporating the Committee's comments. It should be noted that the sections in bold italics are included to assist members in considering the draft response and will not be included in the response to the DCLG.

## Appendix 1

### DRAFT RESPONSE TO THE DEPARTMENT OF COMMUNITIES AND LOCAL GOVERNMENT CONSULTATION – COMMUNITIES IN CONTROL: REAL PEOPLE, REAL POWER, CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES

## INTRODUCTION

Manchester City Council (“the Council”) welcomes the consultation by the Department of Communities and Local Government (“the DCLG”) regarding the proposed amendment of the existing statutory code of conduct for local authority members (“the Code”). The Council’s opinions on the consultation questions are set out below.

## CODE OF CONDUCT FOR LOCAL AUTHORITY MEMBERS

**Question 1 – Do you agree that the Code should apply to a members’ conduct when acting in their non-official capacity?**

*The 2006 Livingstone case cast doubt on the ability of the Code to apply to behaviour that was not linked to public duties. The DCLG seeks to clarify which provisions of the Code apply to a member’s conduct in a non-official capacity and proposes that the Code should contain the following provision:*

***“Members must not bring their office or authority into disrepute by conduct which is a criminal offence”.***

Yes, but only (as proposed) where that conduct involves the commission of a criminal offence by the member concerned.

The Local Authorities (Model Code of Conduct) Order 2007 provides that in addition to paragraph 5 (bringing the member’s office or authority into disrepute), paragraphs 3(2)(c) (intimidation in connection with allegations of breach of the Code) and 6(a) (use of position improperly to confer advantage/disadvantage on the member or other person) would have effect where the conduct constituted a criminal offence for which the member has been convicted. The Council seeks clarification that the only circumstance in which it is proposed that the Code will apply to a member’s conduct when acting in their non-official capacity, is conduct which is a criminal offence and which could reasonably be regarded as bringing the member’s office into disrepute.

The Council also seeks clarification that paragraph 5 of the Code (bringing the member’s office or authority into disrepute) will continue to apply to members acting in their official capacity.

**Question 2 – Do you agree with this definition of ‘criminal offence’ for the purpose of the Code? If not, what other definition would you support, for instance should it include police cautions? Please give details.**

***The DCLG proposes that 'criminal offence' be defined as 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 fine instead of facing a criminal conviction. The intention is that minor offences capable of attracting fixed penalty notices, for example minor motoring offences, parking offences and dropping litter should be excluded from the remit of the Code.***

The Council agrees that for the purposes of the Code, the proposed definition of 'criminal offence' should exclude both minor offences capable of attracting fixed penalty notices as well as cautions which fall short of a criminal conviction.

**Question 3 – Do you agree with this definition of 'official capacity' for the purpose of the Code? If not, what other definition would you support? Please give details.**

***The DCLG proposes that, for the purposes of the Code, 'official capacity' be defined as being engaged in the business of the authority, including the business of the office to which the member is elected, or appointed, or acting, claiming to act or giving the impression that the member is acting as a representative of the authority. This is effectively the same definition as that in the Local Authorities (Model Code of Conduct) Order 2007***

The Council agrees with the proposed definition of 'official capacity'.

**Question 4 – Do you agree that the Code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?**

***The DCLG proposes that the Code would engage with conduct committed in a foreign country, where that conduct constitutes a criminal offence in that country, but only where the conduct would also constitute a criminal offence if it was committed in the UK. However, the Code would only apply if the individual was convicted in the country in which the offence was committed.***

Yes, on grounds of consistency and fairness.

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

***The DCLG proposes that where an allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, the standards committee or the Standards Board, as the case may be, would cease their investigation process until the criminal process has been completed. Any subsequent action under the conduct regime in respect of a member's private conduct would follow the conclusion of the criminal procedure. The member would not be suspended during the period of the criminal process. It should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by section 80 of the Local***

**Government Act 1972, with the member automatically disqualified from office for five years.**

Yes, to do otherwise would be to 'second guess' the outcome of the criminal process and could potentially prejudice it. However, the appropriate suspension period of the investigation process should be until the initial conviction is made, not until the exhaustion of the criminal process.

**Question 6 – Do you think that the amendments to the Code suggested in the above bullet points are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?**

***The DCLG proposes the following amendments to the Code reflecting discussions with the Standards Board and their experience of the practical operation of the Code over the last year:***

- ***Article 2(5) of the Local Authorities (Model Code of Conduct) Order 2007 be amended to apply paragraph 12(2) to parish councils, to make it mandatory for parish councils that a member with a prejudicial interest may make representations at a meeting if members of the public are able to attend that meeting for the same purpose. Currently, this provision is optional for parish council's, therefore if a parish council wants this provision to apply it must make a conscious decision to adopt paragraph 12(2) into its Code. This amendment would ensure consistency across parish councils.***
- ***Paragraphs 8(1)(a)(i) and (ii) of the current Code be amended to clarify that the sections are referring to other bodies that a member may be a member of or which exercise functions of a public nature, putting it beyond doubt that this is not a reference to the authority itself.***
- ***The current wording of paragraph 8(1)(a) of the Code be amended to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25 in the register of members' interests. Currently the requirement is to register the interests of any person from whom the member has received a gift or hospitality with an estimated value of at least £25.***
- ***Paragraph 10(2) of the Code be amended to remove the double negative in the current drafting, to make it clear that a prejudicial interest exists where the business of an authority affects a member's financial position or the financial position of a person listed in paragraph 8 of the Code or it relates to the determining of any approval, consent, licence, permission or registration in relation to a member or those persons listed in paragraph 8 of the Code.***

- ***That the meaning of ‘determining of any approval, consent, license, permission or registration’ in paragraph 10(2)(b) be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.***
- ***That paragraph 10(2)(c) be amended to clarify that a member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a member of the authority had failed to comply with the Code.***
- ***That any new Code would take into account any existing registration of members’ interests. This will ensure that members who have already registered their interests in line with the 2007 model code do not have to repeat the process when the revised Code is introduced.***

The Council agrees that these proposed drafting amendments are required.

The Council seeks clarification regarding the provisions of paragraph 11 of the Code (prejudicial interests arising in relation to overview and scrutiny committees). This paragraph provides that any member has a prejudicial interest in business before an overview and scrutiny committee regarding a decision made, or action taken, where they were a member of the committee or Executive taking the decision **and** they were present when the decision was taken. Members have the same right as a member of the public under paragraph 12(2) of the Code to attend an overview and scrutiny committee meeting to make representations, answer questions and give evidence, then must leave immediately afterwards. The Council notes section 21(13) of the Local Government Act 2000 provides:

*"An overview and scrutiny committee of a local authority or a subcommittee of such a committee-*

*(a) may require members of the executive, and officers of the authority, to attend before it to answer questions, and*

*(a) may invite other persons to attend meetings of the committee."*

Section 21(13)(a) requires an Executive member to attend an overview and scrutiny meeting to answer questions. As primary legislation, this will override any provision of the Code. Section 21(13)(b) allows an overview and scrutiny committee to invite any person to attend to answer questions, which would include any member of the Council. Paragraph 11 should be amended to clarify that where an overview and scrutiny committee requires a member of the Executive, or any other member, involved in making a decision which is being scrutinized, to attend before it to answer questions about that decision, this is not a prejudicial interest.

**Question 7 – Are there any aspects of conduct currently included in the Code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?**

No.

**Question 8 – Are there any aspects of conduct in a member’s official capacity not specified in the Code that should be included? Please give details.**

No.

**Question 9 – Does the proposed timescale of two months, during which a member must give an undertaking to observe the Code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?**

***Provision is made in section 183 of the Local Government and Public Involvement in Health Act 2007 for members to give to their authority an undertaking to observe the new Code within a period prescribed by the Secretary of State. The DCLG proposes that members will have two months from the date their authority adopts the new Code to give a written undertaking that they will observe their authority’s Code. Failure to do so will mean that they cease to be members of the authority.***

The Council agrees with the proposed timescale of two months.

The Council notes that the Standards Board stated in issue 32 of its bulletin that it is unnecessary for members who have signed an undertaking to observe the members’ code when elected, to sign a further declaration when a revised members’ code is issued. The Standards Board bases this opinion on its interpretation of section 52(2) of the Local Government Act and of the prescribed form of declaration contained in the Local Elections (Declaration of Acceptance of Office) Order 2001 [SI 2001/3941].

Section 52(2) provides that:

*“The form of declaration of acceptance of office which may be prescribed by an order under section 83 of the Local Government Act 1972 may include an undertaking by the declarant that in performing his functions he will observe the authority’s code of conduct for the time being under section 51.”*

The prescribed form of declaration contained in the 2001 order states:

*“I undertake to observe the code as to the conduct which is expected of members of the [insert name of authority].”*



The Standards Board considers that these provisions refer to the member being bound by whatever members' code is in force at the authority and consequently it is not necessary for sitting members to complete a further declaration when the revised code is adopted. The Council seeks clarification as to whether it is intended that sitting members will be required to complete a further declaration.

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

***With regard to the General Principles underpinning the Code it is proposed by the DCLG that the General Principles Order be amended to make clear which principles apply when a member is acting in an official capacity and which apply when the member is acting in a non-official capacity. It is proposed that that the 10 existing principles apply to a member when acting in an official capacity and that a new principle be added which will apply when the member is acting in an non-official capacity, where the member's conduct would constitute a criminal offence. It is proposed that the following be added to the Schedule of the Relevant Authorities (General Principles) Order 2001:***

***Duty to abide by the law***

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

Yes, however the Council would expect all members to be guided by the General Principles whether acting in an official or non-official capacity.

**Question 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?**

***Section 49 of the Local Government Act 2000 enables the Secretary of State to define what constitutes a 'criminal offence' and what constitutes 'official capacity' in the context of the General Principles Order. For the purposes of the revised General Principles Order, we propose that 'criminal offence' be defined as any conduct that has resulted in a criminal conviction.***

This definition is broader than the proposed definition of 'criminal offence' proposed for breaches of Code, as it does not exclude offences where there is an option to pay a fixed penalty. The Council considers that a consistent definition should apply in both cases and that the definition applied earlier in relation to the provisions of the Code should apply in both cases.

**Question 12 – Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?**

***The DCLG proposes that, for the purposes of the revised General Principles Order, 'official capacity' be defined as being engaged in the business of the authority, including the business of the office to which the member is elected,***

***or appointed, or acting, claiming to act or giving the impression that the member is acting as a representative of the authority.***

Yes.