

STANDARDS COMMITTEE

MONDAY, 26 FEBRUARY 2007

PRESENT:- Mr Keith Carby (Chair), Mr Trevor Davies (Vice-Chair), Mr Paul Morris, Mr Mike Compton, Councillor Melanie Duff and Councillor Maurice Fanning.

22. Declarations of Interest

The Chair reminded Members of the need to declare any known interests in any matters to be considered at the meeting. No declarations were made.

23. Minutes

Resolved – That the minutes of the meeting held on 29th January 2007, be confirmed and signed as a correct record.

Matters Arising – Further to Minute 20 (iii), the Director of Law and Democratic Services confirmed that as requested by the Committee he had written to the Standards Board for England to offer the Committee as a pilot for local filtering of complaints and to support the Standards Board's new monitoring and auditing role.

24. Public Question Time

No public questions were received during the meeting.

25. Consultation on Amendments to the Model Code of Conduct

The Committee received a report on the proposed changes to the Model Code of Conduct for Local Authority Members issued as part of a consultation by the Department for Communities and Local Government (DLCG). Comments on the consultation were invited by 9th March 2007.

Agreed that – The Director of Law and Democratic Services be authorised to respond to the Consultation Paper as set out at Appendix '1'.

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SWINDON BOROUGH COUNCIL
Response to Consultation Questions

Question 1

Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?

Comment:

This issue was discussed by the Council's Standards Committee last year when the Government first announced its intention to review the Code. It is now proposed that disclosure of information acquired by a member in confidence is not a breach of the Code if the member can demonstrate that it was in the public interest to disclose. This accords with the principles of the Freedom of Information Act. Under that Act, however, the public interest test is not applied and determined by an individual member. The Standards Board is to issue guidance on how they would expect members to interpret the new provision.

The Standards Committee previously expressed the view that the 'public interest defence' should be as restricted as possible and that to give members discretion to make their own judgement runs the risk of the test being applied inconsistently by different members and the perception that political factors could play a part.

The Standards Committee wish to emphasise their view that the public interest defence be as restricted as possible, and that there should be a requirement in the Code that before disclosing confidential information, members should be specifically required to consult the relevant officer of their authority responsible for deciding on the public interest test and have regard to that advice.

Question 2

Subject to powers being available to us [ie the Government] to refer in the Code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in a member's private capacity to those activities which have already been found to be unlawful by the Courts, appropriate?

Comment:

Currently, a member can be found to have breached the Code if he/she is found to have conducted him/herself in a manner 'which could reasonably be regarded as bringing his/her office or the Authority into disrepute'. This includes conduct by a member when acting in a private capacity. The Standards Committee recalled that a recent judgement in the High Court concerning the Mayor of London has cast doubt on the ability of the current Code to proscribe the behaviour of members acting in a private capacity. The Government has declared its intention to amend the Local Government Act 2000 to ensure that behaviour in a private capacity is included within the remit of the Code.

The Government is suggesting that the Code be amended so that only private behaviour for which a member has been convicted by a court should be a breach of the Code, and not behaviour falling short of a criminal offence. The Standards Committees own view is that only criminal activity of a sufficiently serious nature (ie imprisonable) should be able to be taken into account in determining if a Member is bringing the Council into disrepute. Accordingly, this proposal be supported with that caveat.

Question 3

Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, eg via guidance issued by Local Government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?

Comment:

The Publicity Code concerns the content, style and distribution of promotional activity and material produced by authorities, supplementing the basic statutory requirement that authorities must not use their resources for political purposes. The revised Code of Conduct now includes a requirement that a member must have regard to any Local Authority Code of Publicity.

The Consultation Paper makes the point that the Publicity Code may be unnecessary given the basic statutory requirement upon authorities and members individually not to use the authority's resources improperly for political purposes.

Certainly the Publicity Code needs to be updated but while it exists, it would seem sensible for Members to be required to have regard to it. The Standards Committee considers that it would be useful to specifically provide in the Code that Members should not only have regard to the Publicity Code but also to any other statutory guidance that may be relevant in relation to any aspect of the Code.

Question 4

Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?

Comment:

The Standards Committee considers that it is difficult to argue against the suggestion that the receipt of gifts or hospitality is an interest which should be registered as a personal interest and be publicly available. The revised Code suggests retaining the £25 value threshold. The Standards Committee has not felt in the past that there is any need to change the £25 threshold and supports this proposal.

Question 5

Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?

Comment:

The definition of ‘personal interests’ has been extended to include matters affecting personal, business and professional associates as well as people who would specifically be termed family and friends. The Code now refers to ‘any person with whom the member has a close personal association’. This is qualified to the extent that a personal interest exists only ‘where the member is aware or ought reasonably to be aware’ of the interest.

The Standards Committee has previously been of the view that ‘close personal associate’ still requires a value judgment to be made as to how close the personal association may be and so considered that it did not greatly help in resolving the previous problem as to how to define the word ‘friend’. Nevertheless, this provision will require more personal interests to be declared than before as another category of people has been added to the list of those who the Member must have regard to in assessing whether or not there is a personal interest. The Standards Committee considers that the aims set out in Question 5 have not been achieved because of the difficulty in defining those within the ambit of the proposed text.

Question 6

Would it be appropriate for new exceptions to be included in the text of additions to the list of items, which are not to be regarded as prejudicial?

Comment:

Paragraph 17 of the DCLG consultation document lists new items which it is proposed to add to the list of interests which are not to be regarded as prejudicial.

Although the new exceptions relating to ‘Indemnities’ and the Freedom of the Borough have not been a problem at this Authority in that they have not been considered to amount to prejudicial interests anyway, the provision in relation to Council Tax may cause some confusion. As drafted, it relates purely to the ‘setting’ of the Council Tax which is done at the Budget Meeting, and it may be necessary for clarification as to whether this also covers funding discussions during the year.

There are two important changes to the section of the Code dealing with prejudicial interests which are not the subject of a question in the DCA consultation document, but which the Committee need to be aware of. The first is a new category of public service interest where a member is also a member of another public body. The revised Code proposes that the public service interest need only be declared at meetings where the member speaks on the relevant issue.

Question 7

Is the proposed text relaxing the rules to allow increased representation at meetings, including where members attend to make representations, answer questions or give evidence, appropriate?

Comment:

This is a contentious part of the new Code. Hitherto it has been clearly understood that the Code prevents a member from being present at a meeting when a matter is under discussion in which he/she has a prejudicial interest. There have been legal challenges to this part of the Code, but all have failed. However, there has been concern in a number of quarters that this provision effectively denies a member from properly undertaking his/her constituency role, and the Government has responded to this concern by proposing an amendment to the Code.

This amendment would allow a member to attend a meeting for the purpose of making representations, answering questions or giving evidence relating to a matter, provided that the meeting agrees that the member may do so and that after making representations the member withdraws from the room where the meeting is being held.

The Standards Committee have previously taken the view that Members should not be able to speak at a meeting where they have a prejudicial interest as this could influence the outcome and have an adverse effect on the public's perception of the ethical standards of the Council. The Committee remains of that view and considers that the proposed text is not appropriate.

Question 8

Is there a better, more user friendly way of ensuring the text is gender neutral, for example, would consultees consider that amending the wording to say 'you' instead of 'he or she' or 'him or her' would result in a clearer and more accessible Code for Members ?

Comment:

No comments have been received by the Monitoring Officer from Members of the Council that the use of 'he or she' or 'him or her' is not user friendly. The Standards Committee does not consider that amending the wording is necessary or desirable.