

Swindon Borough Council

Standards Committee

Monday, 26 February 2007

Committee Room 1, Civic Offices, Swindon
(Anticipated meeting room)

At 5.00 p.m.

Councillors

Melanie Duff
Peter Stoddart (Deputy)
(Conservative)

Maurice Fanning
Fay Howard (Deputy)
(Labour)

Martin Wiltshire
(Liberal Democrat)

Independent Members

Mr Keith Carby (Chair)
Mr Trevor Davies (Vice-Chair)

Parish Representative

Mr Mike Compton
Mr Richard Hailstone,
Deputy)

(Copy to all other Members of the Council – For Information)

Committee Officer: Sarah Lawrence (Telephone 01793 463603)
email: slawrence@swindon.gov.uk

Swindon Borough Council can be contacted at the Civic Offices, Euclid Street, Swindon, SN1 2JH (Telephone 01793 463000)

AGENDA

1. Apologies for Absence

2. Declarations of Interest

Members are requested at the start of the meeting to declare any known interests in any matter to be considered, and are reminded that any such interest should also be declared at the start of an item or during any discussion of the matter concerned.

3. Minutes (Pages 1 - 4)

4. Public Question Time

(See explanatory note below. Please phone the Committee Clerk whose name and number appears at the top of this agenda if you need further guidance.)

5. Consultation on Amendments to the Model Code of Conduct (DLDS-R) (Pages 5 - 12)

15 February 2007 (being date of agenda despatch)

Key:

GDR Group Director, Resources

Public Question Time - Swindon Borough Council is committed to increasing its accountability to the public and to promoting active citizenship. Up to 15 minutes will be allowed at the start of all Council meetings for questions to the Chair from members of the public about the work of the Committee (except for confidential matters and specific planning applications). Questions must be relevant, clear and concise. Because of time constraints Public Question Time is not an opportunity to make speeches or statements. Prior notice of a question to the Director of Law and Democratic Services is desirable - particularly if detailed background information is needed.

Access Arrangements - The venue is wheelchair accessible and an infrared receiver hearing system is provided. If you would wish to attend the meeting but have any special requirement to enable you to do so please contact the Committee Officer, whose name appears at the top of this agenda, as soon as possible prior to the date of the meeting.

If you would like to receive any of the pages contained in this agenda in a larger print size please contact the Committee Officer whose name appears on the first page of this agenda.

Standards Committee - Terms of Reference

The Standards Committee has the following roles and functions in accordance with Article 9 of the Council's Constitution:

- (a) promoting and maintaining high standards of conduct by councillors and co-opted members including church and parent governor representatives;
- (b) assisting the councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- (c) advising the Council on the adoption or revision of the Members' Code of Conduct;
- (d) monitoring the operation of the Members' Code of Conduct;
- (e) recommend training on any aspects of conduct and behaviour for Councillors and officers where it considers it would be of benefit;
- (f) approving other codes of conduct and behaviour which apply to Councillors, employees, contractors and any other parties or organisations associated with Council activity (for employees approval will be subject to agreement through recognised negotiating machinery where appropriate).
- (g) receiving from the Council's Monitoring Officer details of all allegations of any breach of the Code of Conduct;
- (h) determining any matters which may be referred to it by the Monitoring Officer or the Standards Board for England;
- (i) supporting the Council's Monitoring Officer in discharging his/her role;
- (j) granting dispensations to councillors and co-opted members, including church and parent governor representatives, from requests relating to interests set out in the Members Code of Conduct;
- (k) To also exercise (a) to (j) above in relation to the parish councils wholly or mainly in its area and the members of those parish councils;
- (l) ensure the Council's complaints procedure operates effectively in relation to standards of conduct and behaviour of staff and in particular
 - receive annual reports on its operation
 - receive regular monitoring reports on complaints in relation to standards of conduct and behaviour that have resulted in a final warning to a member of staff

- adjudicate upon all complaints which remain unresolved
 - require Service Managers to report upon any areas of activity which may have been the subject of criticism in respect of standards of conduct and behaviour
 - approve and publish an annual report upon the operation of the system;
- (m) report to the Council when it considers:-
- standards of conduct and behaviour in a particular area need reviewing, and
 - the level of commitment necessary to resolve these difficulties should be greater;
- (n) approve and monitor the Council's anti-fraud strategy and whistle-blowing procedures and ensure they operate effectively;
- (o) recommend to the Council the payment of compensation or the taking of any other action relating to standards of conduct and behaviour where this is considered appropriate;
- (p) report to the Council on the result of any investigation into the standards of conduct and behaviour of a Member;
- (q) approve procedures associated with the appointment of an independent remuneration panel for Councillors' Allowances.

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STANDARDS COMMITTEE

MONDAY, 29 JANUARY 2007

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

15. Declarations of Interest

The Chair reminded Members of the need to declare any known interests in any matters to be considered at the meeting.

Mr Keith Carby and Councillor Maurice Fanning made personal and prejudicial declarations of interest in respect of Agenda Item No. 8 (c) (Complaints to the Standards Board), as they had both objected to a planning application, the process of which was the subject of a complaint. Both Mr Carby and Councillor Fanning left the room and took no part in the discussion of this item.

16. Minutes

Resolved – That the minutes of the meeting held on 23rd October 2007, be confirmed and signed as a correct record.

17. Public Question Time

No public questions were received during the meeting.

18. Exempt Items - Exclusion of Press and Public

Resolved - That, in accordance with Section 100A(4) of the Local Government Act 1972, the public be excluded during the discussion of the matters referred in Agenda Item 8 on the grounds that it would involve the likely disclosure of exempt information as defined in Paragraphs 1 and 2 of Schedule 12A to the Act, and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information concerned (Minute 21 refers.)

19. Anti-Fraud and Corruption and Whistleblowing Policies

The Committee considered a report from the Director of Law and Democratic Services and Head of Internal Audit recommending that the Committee receive and approve the updated Anti-Fraud and Corruption Strategy and the Whistleblowing Policy for consultation. The Committee noted that it was important for the success of the Whistleblowing Policy that staff understood that reporting matters of concern would not result in their disadvantage. This principle was being demonstrated by that fact that all those who had used the policy were still employed by the authority, and two had been promoted. The Head of Internal Audit circulated a copy of the Council's Fraud Bulletin (4) for January 2007.

Resolved – 1) That the following amendments be made to the documents:

- *Anti-Fraud and Corruption Strategy* – amend paragraph 16.1 to clarify the role of the Standards Committee in monitoring the policy.
- *Whistleblowing Policy* – amend paragraph 2.3 to include 'likely to bring Authority into disrepute'.

2) Subject to 1) the Head of Internal Audit consult relevant stakeholders (including Group Directors, Directors, External Auditors and Capita) and report back to the next suitable Standards Committee.

20. Ethical Framework Update

The Committee received a report from the Director of Law and Democratic Services (Monitoring Officer) providing an update of various matters relating to the Ethical Framework in respect of:

- i) Lay Memberships – The Committee noted that Mr Trevor Davies seat on the Committee was due for re-advertisement in April 2007. It was suggested that the Monitoring Officer be given a general authority to carry out the necessary advertisement process for this and all future vacancies.
- ii) Implications of the Livingstone Case – The Committee received Guidance from the Standards Board on the implications of the case for the way in which the Code of Conduct can apply to members' actions.
- iii) Local Government and Public Involvement in Health Bill – Members of the Committee were informed of the current proposals in the Bill related to ethical standards and politically restricted posts. The Monitoring Officer advised that the Swindon's Standards Committee had been put forward to pilot the new approach to handling complaints in the Bill, whereby complaints are made first to local Standards Committees, and only referred up to the Standards Board on the Committee's recommendation.
- iv) Revised Members' Code of Conduct – The Committee received the revised Code of Conduct, which had been issued by the Secretary of State on 25th January for consultation. The revised Code was expected to come into effect in time for the new municipal year. In order to reply by the deadline of 9th March, it was agreed that a special meeting of the Committee would be held on 26th February.
- v) Standards Board Publications – The Board received the Standards Board Alerts 2 and 3, Standards Board Bulletin for November 2006 (Issue 31), Town and Parish Standard for November 2006 (Issue 8), and the Case Review (Number Fours), and noted key areas of interest for the work of the Standards Committee.
- vi) Berkshire, Oxfordshire and Wiltshire Independent Standards Committee Members' Forum – The Vice-Chair reported back on the meeting of the Forum held on 27th October.
- vii) Media Guidelines – Members were advised that the Head of Communications was currently consulting with Members on the revised Guidelines and would report back to the next meeting.
- viii) Ethical Audit - The Monitoring Officer proposed that he refresh the desktop ethical audit for the Council. The last audit had been carried out in January 2005. He would report back to the next meeting, for the Committee to undertake a gap analysis and agree next steps. This refresh would be supported by evidence arising out of recent Council User Satisfaction Survey.

Resolved - 1) That the Ethical Framework Update be noted; and

(2) That the Director of Law and Democratic Services be authorised to carry out the public advertisement and appointment process for Lay Member vacancies on the Standards Committee and to recommend appointments to Council; and

(3) That the Director of Law and Democratic Services undertake a further desktop audit of ethical standards against criteria in the IDeA toolkit and report back

to the next meeting.

21. Ethical Framework Compliance Update

The Committee considered a report of the Director of Law and Democratic Services (Monitoring Officer) concerning the progress and outcome of various ethical framework compliance matters including a) whistleblowing complaints, b) breaches of the Member / Officer protocol and c) complaints to the Standards Board for England.

Resolved – 1) That the report in respect of ethical framework compliance issues be noted; and

2) That the Monitoring Officer arrange for Hearings Training for Standards Committee members and their deputies to take place prior to the next meeting on 26th February 2007.

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Consultation on Amendments to the Model Code of Conduct for Local Authority Members

Standards Committee

Date: 26 February 2007

Author: Director of Law and Democratic Services

Wards Affected: All

Purpose

- To report on the proposals for changes to the Model Code of Conduct for Local Authority Members (the Code) and to agree a response to the Consultation Paper.

Recommendation

- That the Director of Law and Democratic Services (Monitoring Officer) be authorised to respond to the Consultation Paper as set out in this report, subject to any further comments or amendments which may be made by the Committee

1. Reasons

- 1.1 It is a function of the Standards Committee to advise the Council on the adoption or revision of the Members' Code of Conduct, to monitor its operation, and to approve codes of conduct and behaviour which apply to Councillors.

2. Detail

Background

- 2.1 Members last considered proposals for a revised Members Code of Conduct at its meeting on 30th January 2006, and agreed a response to the Consultation Paper issued at that time.
- 2.2 As members will know from its last meeting, the Department for Communities and Local Government (DCLG) has now issued a further Consultation Paper setting out the proposed changes to the Code. Comments are invited by 9th March 2007.
- 2.3 The Consultation Paper has already been circulated to members of the Standards Committee and to the political Groups. If any further copies are required, then these can be obtained from the Monitoring Officer. The Consultation document consists of two parts – a commentary on the detailed amendments proposed, and the full text of the proposed new Code.

Further information on the subject of this report can be obtained from Stephen Taylor on Direct Dial on 01793 463012 or Email staylor@swindon.gov.uk.

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- 2.4 The Consultation Paper (at Annex B) poses eight questions on which the DCLG would welcome comments. Set out below is a view on each of these questions, which the Committee may wish to either adopt or take as the starting point for discussion.

Consultation Questions

Question 1

- 2.5 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:

- 2.6 **This issue was discussed by the 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.**
- 2.7 **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.**
- 2.8 **Accordingly, it is suggested that the Standards Committee again make the point 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 must have regard to advice from the relevant officer of their authority responsible for deciding on the public interest test.**

Question 2

- 2.9 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

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capacity to those activities which have already been found to be unlawful by the Courts, appropriate?

Comment:

- 2.10** 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 Committee will recall 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.
- 2.11** 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. This is broadly in line with the Standards Committee own previously expressed view 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, it is suggested that this proposal be supported.

Question 3

- 2.12** 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:

- 2.13** 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

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Conduct now includes a requirement that a member must have regard to any Local Authority Code of Publicity.

- 2.14 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.**
- 2.15 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 together with any other statutory guidance that may be relevant in relation to any aspect of the Code.**

Question 4

- 2.16 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:

- 2.17 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 it is suggested that this proposal be supported.**

Question 5

- 2.18 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:

- 2.19 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.**

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- 2.20** 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. Members are asked whether the aims set out in Question 5 have been achieved.
- 2.21** There is another matter to do with personal interests which is not reflected in the questions set out in the DCLG consultation document. Members will know that currently a member must regard him or herself as having a personal interest in any matter if a decision upon it might reasonably be regarded as affecting to a greater extent than other council tax payers, rate payers, or inhabitants of the authority’s area, the wellbeing or financial position of the member, relative, etc.
- 2.22** The new Code clarifies and reduces the number of registrable interests by replacing the reference to the inhabitants of an authority’s area with “the majority of the inhabitants of the ward affected by the matter”, and it is suggested that this be welcomed.

Question 6

- 2.23** 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:

- 2.24** 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.
- 2.25** 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.

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- 2.26** 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.
- 2.27** The second significant change concerning the list of exemptions relates to the way the Code is worded. Currently, if one of the exemptions applies a member may regard him or herself as not having a prejudicial interest. This means that a member has to make a conscious decision whether or not one of the exemptions applies. In the new Code, it is clearly stated that a member does not have a prejudicial interest in one of the matters in the list of exemptions. A member will therefore no longer have to make a conscious decision.

Question 7

- 2.28** 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:

- 2.29** 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.
- 2.30** 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.
- 2.31** 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

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adverse effect on the public's perception of the ethical standards of the Council. The Committee's view is sought as to whether the new proposals resolve this perceived problem.

Question 8

- 2.32 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:

- 2.33 **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 views of the Standards Committee are sought on this issue.**

Conclusion

- 2.34 Overall, the proposals for the revision of the Code are to be welcomed and it is suggested that the Director of Law and Democratic Services (Monitoring Officer) be authorised to respond to the Consultation Paper along the lines indicated subject to any additional comments of Members.

Alternative Options

- None

Risk Management

Financial and Procurement Implications

- None

Legal / Human Rights Implications

- None

Links to Corporate Plans and Policies (in particular to Swindon 2010 Promises)

- Monitoring of issues of probity in the Council underpins the Council's plans and policies and to the delivery of the 2010 objectives.

Consultees

- Group Director, Resources
- The Director of Finance and Director of Law and Democratic Services are consulted on all reports.

Background Papers and Appendices

- None

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