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Karl Holden,  
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Your Ref:  
Our Ref: L/DJE/04703  
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Dear Mr Holden,

### **Consultation on new Codes of Conduct for local authority members and employees**

Here are this Council's responses to the questions asked in your consultation paper.

#### **Code of Conduct for Members**

##### **Question 1: Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?**

We agree with the statement in paragraph 2.8 that "certain behaviour, even where there is no direct link to the member's official role, can have an adverse effect on the level of public trust" – and, we would add, of confidence – "in local authority members and local government as a whole" and we observe that such behaviour might not amount to a criminal offence, yet still damage the reputation of a local authority. We answer this question **Yes**.

##### **Question 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.**

We accept the premise that conduct should not be characterised as "criminal" for the purposes of the Code until a court has pronounced upon it; but we are also aware that there may be many reasons why criminal conduct never reaches a courtroom. If there is an absence of evidence for criminal prosecution (where the standard of proof is "beyond reasonable doubt") there may yet be enough evidence to say that a member has brought his or her council into disrepute. But it is also important that members should be able to perceive and observe the difference between acceptable and unacceptable conduct in their private lives, in terms of the Code.

We agree with the proposition that "minor" offences, that is to say those punished (not "punishable") by fixed penalties, should not amount to criminal offences for the purposes of the Code. But a member of the Standards Committee, who is a JP, observes that "It has to be recognised that fixed penalties, including penalty notices for disorder, are increasingly being used by the police to impose summary justice in more than just minor offences. The courts see the alleged offenders if they elect to submit to its jurisdiction or fail to pay the fine."

The definition proposed in paragraph 2.10 is clearer, and therefore more acceptable than using a subjective term like “serious criminal offence” but it may not go far enough. For example, if a member is absolutely or conditionally discharged by the court, he or she will not be regarded as having been convicted: s.14 of the Powers of the Criminal Courts (Sentencing) Act 2000. And a person who is cautioned will have admitted guilt (please note that not only the police caution people: local authorities and other prosecutors do, too). In either of those circumstances it may still be important to consider whether the behaviour was unacceptable in the local authority context.

**Question 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.**

**Yes.** The definition proposed is very similar to the present one but it seems clearer to say “engaged in the business of your authority” than “conducting” it. The proposal does not however deal with the definition of what is “an office” to which a member is elected or appointed, which currently is not satisfactory. We think it means being a council or committee chairman, a member “champion” or a representative appointed by the council to sit on another public body; but all of these could be characterised as being the business of the authority anyway and we are not clear, therefore, what is added by including “the business of the office”.

**Question 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.**

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

**Yes.** We agree that it would not be appropriate for a member to undergo a Standards Committee investigation until any criminal proceedings are complete, particularly if the only breach of the Code of Conduct alleged is the supposedly criminal conduct. But sometimes it takes many months before a trial is concluded and there are certain offences (e.g. harassment; serious assault; child pornography) where it may equally be wholly inappropriate that a member should continue to represent their community.

We propose that provision be made so that if a member be remanded in custody charged with such a serious offence, a Standards Committee may ask the Adjudication Panel for England to consider suspending the member pending either his or her remand on bail, or the disposal of the criminal proceedings, or both. Then alternative arrangements may be made for community representation. However I should add that one member of the Standards Committee who is a JP has commented on this suggestion in these terms:

“I understand and sympathise with [this] principle ... [but]...remand in prison must not be seen as a punishment; courts are entitled to take the evidence against the defendant at its highest when considering a remand, and the remand, although often based on the serious nature and likely disposal of the offence, can also be influenced by other elements which apply to the defendant rather than the crime, e.g. previous failure to answer summons, likelihood of committing further offences or interfering with witnesses etc. People are of course innocent until proven guilty and I am sure

that there are examples of defendants who have been remanded in custody and subsequently walked free from the courts.”

**Question 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?**

To the proposals in the paragraphs numbered we say:

2.24 **Yes**, subject to the reservation that many parish councils allow the public to speak only before their meeting commences and so the provision would be pointless.

2.25 **Yes**. But paragraph 8 of the present Code isn’t very clear. It is really hard to navigate your way through it because it is so wordy. We think it would be better to say more simply that you have a personal interest when one of the interests that you have registered is engaged in the business before the Council (as the 2001 Code did).

2.26 **Yes**.

2.27 **Yes**. We agree wholeheartedly.

2.28 **Yes**.

2.29 **Yes**.

**Question 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?**

**No**, we don’t think so.

**Question 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.**

**Yes**. We have included this provision in paragraph 7 of the Model Code:

*7(2) When reaching decision on any matter you must –*

*(a) do so on the basis of the merits of the circumstances and in the public interest;*

*(b) have regard to any advice provided to you by the authority’s officers – in particular by –*

*(i) the Strategic Director for Resources (the s. 151 Officer) especially where that officer is acting pursuant to his or her statutory duties;*

*(ii) the Monitoring Officer, especially where that officer is acting pursuant to his or her statutory duties;*

*(iii) the solicitor to the Council, who should be consulted whenever there is any doubt as to the authority’s power to act, or as to whether the action proposed lies within the policy framework agreed by the authority, or where the legal consequences of action or failure to act by the authority might have important repercussions”.*

**Question 9: Does the proposed timescale of two months, during which a member must give the 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?**

**Yes.**

**Question 10: Do you agree with the addition of the new General Principle, applied specifically to conduct in a member's non-official capacity?**

**Yes** it would be worth adding this idea to the General Principles but why not just add it to paragraph 8 (*Duty to uphold the law*)?

**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?**

**Yes.** It must chime with what the Code says (or vice versa).

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

**Yes.** It must chime with what the Code says (or vice versa).

### **Code of Conduct for Employees**

**Question 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?**

**No.** We are not aware of any public lack of confidence in the ethical conduct of any local authority's staff.

Principal local authorities should be trusted to arrange for appropriate provisions in their own terms and conditions of employment which, for most, are the subject of national collective bargaining; there are no other statutory terms or conditions and the case for including these compulsorily is not made out. For smaller authorities or those that do not subscribe to the national arrangements, a model code could be useful.

The responses that follow are predicated on the assumption that a model code for employees is introduced, despite our reservations.

**Question 14: Should we apply the employees' code to fire-fighters, teachers, community support officers and solicitors?**

**Yes,** but: fire-fighters, teachers, and community support workers have different terms and conditions only in that because of an historical quirk they are governed by different national joint negotiating arrangements. If despite our submission the Code is to apply to any local government employees it should apply to them all.

Solicitors are employed under the terms of the "Green Book" and for years have been accountable not only as employees but also to the Law Society or Solicitors Regulation

Authority. There has never been any particular difficulty in conforming to both sets of requirements.

**Question 15: Are there any other categories of employee in respect of whom it is not necessary to employ the code?**

The provisions of the proposed Code are such that they ought to apply to people employed in public service anyway. Compulsion is not the answer. But as we now have Single Status for the largest group of employees there should be consistency of provision: all in, or all out.

**Question 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.** But it is about time that the mandatory political restrictions be removed. See below. Then the first sentence of the proposed "political neutrality" clause is sufficient.

A member of the Standards Committee observes that "[the code for employees] must be perceived as supporting rather than inhibiting the day to day performance of duties. The core values do include relationships with other employees and members and equality, whistle-blowing and appointment of staff. It is not just a case of public confidence."

**Question 17: Should the selection of 'qualifying members' be made on the basis of the 'political restriction' style model or should 'qualifying members' be selected using the delegation model?**

We welcome the fact that the Department has looked at how far it is these days necessary to place political restriction on employees at all; that is to say, whether s. 3 of the Local Government and Housing Act 1989 should be repealed, though we are disappointed that no Bill to this effect was included in the Queen's Speech. Defining politically restricted staff by their level of pay was never appropriate. If political restriction must remain then a link to the officer's decision-making or member advisory role would be more suitable.

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

**Yes;** but by virtue of ss. 225 and 228(5) of the Local Government Act 1972 those registers would be publicly available. Please see below.

**Question 19: Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?**

**Yes.** Officers' home addresses should if recorded (which obviously they are for HR reasons) not be published by the authority, even under cover of an apparently benign provision about declaring "land in which they have a beneficial interest".

**Question 20: Does the section of the employees' code capture all the pertinent aspects of the members' code? Have any been omitted?**

If the provision about prejudicial interests is to be included in a mandatory code it should be much clearer what is meant by a "licensing or regulatory" matter. We understand that you are talking about those terms as they are used in the Local Government Act 2000 and the Functions and Responsibilities Regulations, so that in fact it includes matters determining

the outcome of the myriad of other licensing and enforcement powers that local authorities have as well as applications made under the Licensing Act 2003 and the development control function. Both the Code and any related guidance should make that clear so that officers and their managers can work out their position without continual reference to the Monitoring Officer.

**Question 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?**

**Yes;** it may go too far and may discourage suitably qualified and able people from applying for jobs.

If members have two months to register interests so should officers.

A member of the Standards Committee dissents from this representation.

**Question 22: Should the employees' code extend to employees of parish councils?**

It would be unreasonable to extend the employees' code to all parish council employees, many of whom are part-time and poorly paid; but extension to councils over a certain size of population, or Town Councils, could be considered.

Yours sincerely,

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Monitoring Officer