

	<p style="text-align: center;"><b>Standards Committee</b> 13<sup>th</sup> March 2007</p> <p style="text-align: center;"><b>Report from the Borough Solicitor</b></p>
For Action	Wards Affected: ALL
<b>Proposed Changes to the Model Code of Conduct</b>	

## 1.0 Summary

- 1.1 This report sets out the main features of the government's consultation on proposed changes to the model code of conduct and to the ethical standards regime generally.

## 2.0 Recommendations

- 2.1 To note the report

## 3.0 Detail

- 3.1 The Government published the Local Government and Public Involvement in Health Bill in December 2006. This Bill follows on from the White Paper on Strong and Prosperous Communities, published on 26 October 2006. A key chapter in that White Paper related to "Effective, accountable and responsive local government". Chapter 9 of the Bill, 'Ethical Standards', is designed to implement part of that agenda.
- 3.2 The Government's stated intention is to reform the regime for the conduct of local authority members, with most aspects devolved to councils, a clearer, simpler code of conduct for members and a streamlined, more strategic Standards Board. This follows the discussion paper, '*Standards of Conduct in English Government: The Future*' (December 2005) which included the government's response to the recommendations of the Standards Board's on proposed

amendments to the model code and the earlier Select Committee scrutiny.

- 3.3 In practice, this means that the role of the Standards Board for England would be greatly reduced. It will continue to issue policy guidance but will only investigate the most serious allegations of misconduct by members. This will inevitably result in a greater investigation / determination role for the Monitoring Officer and Standards Committee of this council. Broadly speaking, whereas as the present time the initial investigation of allegations of misconduct is undertaken by an ethical standards officer under the new regime it will be the Monitoring Officer (either personally or via a colleague or third party) who will be required to investigate allegations and then present a report on his or her findings to the Standards Committee (or a sub committee of that committee).
- 3.4 The Department of Communities and Local Government has also recently (22 January 2007) issued a consultation paper on amendments to the Model Code of Conduct for local authority members. The consultation document is attached as **Appendix 1**. The closing date for responses to the consultation was 9<sup>th</sup> March 2007. It is anticipated that the Association of Council Secretaries and Solicitors will have commented on behalf of all local authority borough solicitors and, if possible, a copy of that response will be made available to members at the meeting.
- 3.5 The council will be obliged to adopt the provisions of the new Code when finalised. However, it is likely that the council will be able to add on additional more stringent requirements if it chooses to do so. Members will be aware that this Council previously adopted the model Code of Conduct with only minor variations.

#### *Equality*

- 3.6 It is proposed to change the wording in relation to equality issues. This is addressed below under the heading, 'Diversity Implications'.

#### *Bullying*

- 3.7 It is proposed to introduce a new specific provision relating to bullying, making it clear that bullying may amount to a breach of the Code though the new model code does not define bullying – that will be left to guidance to be issued by the Standards Board.

#### *Disclosure of confidential information*

- 3.8 It is proposed to make changes to the provisions dealing with disclosure of confidential information, following an Adjudication Panel decision in 2005 confirming that the Code does not properly take account of Article 10(1) of the European Convention on Human Rights. The amended code will provide that a member may disclose information given to him or her in confidence if such disclosure would be in the public interest and is made in good faith and is reasonable and

provided that the member has not breached the reasonable requirements of the authority. The Standards Board will be issuing guidance on this.

*Conduct in private life*

- 3.9 The decision of the High Court in the case against Ken Livingstone cast some doubt over the ability of the current code to proscribe the behaviour of members in their private lives. The court held that the code can only govern conduct in private life if there is a sufficient nexus or link between the conduct and the member's office. There is a proposal to change the legislation to make it possible for the Code to apply to conduct in private life but it is possible that this will only apply when there has been conviction for a criminal offence.

*Requirement to observe code of practice on publicity*

- 3.10 It is proposed to add a specific requirement to have regard to the government's Code of Recommended Practice on Local Authority Publicity.

*Requirement to report fellow councillors*

- 3.11 It is intended to remove the requirement on members to report allegations of misconduct by fellow councillors as it is felt that this encourages members to make trivial allegations against each other. However, there will be a provision preventing members from victimizing or intimidating witnesses or a complainant.

*Gifts and hospitality*

- 3.12 There will be minor changes to the rules on registering gifts and hospitality but as information about this is already available on the Brent website the amendment is not likely to have much of a change to members here.

*Personal interests*

- 3.13 Probably the most significant and welcome change to the Code will be changes to the rules on declaring personal interests at meetings so as to make it easier for members to fully represent their communities without falling foul of the Code of Conduct. The code currently requires members to disclose many such interests as personal interests and, in some cases, to leave the relevant meeting and not participate in the matter. This has prevented members from participating in local issues and from representing their communities. Under the new rules a personal interest will only arise only where the interest affects the member more than other people in the *ward* that is affected by the matter. This should mean that members raising ward issues should not get caught by the personal and prejudicial interests rule. There will also be a new definition of 'public service interest' i.e. an interest which arises where a member is also a member of another public body to which they have been nominated or appointed by the Council.

#### **4.0 Financial Implications**

- 4.1 The enhanced role for the Monitoring Officer and Standards Committee will be likely to have resource implications for the Council but the extent of these implications are not known at the current time.

#### **5.0 Legal Implications**

- 5.1 These are addressed in the body of the report.

#### **6.0 Diversity Implications**

- 6.1 The current Code of Conduct requires all members to promote equality by not discriminating unlawfully against any person and to treat others with respect (paragraph 2(a)). However, an Adjudication Panel finding in January 2005 concluded that the panel has no jurisdiction to make findings of unlawful discrimination and it is therefore necessary to remove this provision from the Code. It is proposed to replace paragraph 2(a) with a provision proscribing members from doing anything which would seriously prejudice their authority's statutory duties in regard to equality. The requirement to treat others with respect will remain. The government feels that this will allow the Code of Conduct to continue to support the principles of fair treatment and respect for others, including behaviour and actions which could relate to equality issues.

#### **7.0 Staffing Implications**

- 7.1 The proposed changes will have an impact on the role and work of the Monitoring Officer and her staff. The Monitoring Officer may appoint another person to undertake an investigation, and this may be from within or outside the authority.

#### ***Background Papers***

*'Strong and Prosperous Communities' (local government white paper), 2006.*

*Local Government and Public Involvement in Health Bill*

*Consultation on Amendments to the Model Code of Conduct for Local Authority Members, a consultation paper issued by the Department for Communities and Local Government January 2007 (attached at **Appendix 1**).*

**Should any person require any further information about the issues addressed in this report, please contact Terry Osborne, Borough Solicitor on telephone number 020 8937 1292.**

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