

REPORT TO: Standards Committee

DATE: 19th November 2008

REPORTING OFFICER: Strategic Director (Corporate and Policy)

SUBJECT: DCLG Consultation: Member/Officer Codes of Conduct

WARDS: All

1.0 PURPOSE OF THE REPORT

1.1 To seek approval of a basis for the Council responding to the Government's Consultation Paper on an Officers' Code of Conduct.

2.0 RECOMMENDATION: That

2.1 the Standards Committee note the consultation in respect of a revised Officers' Code of Conduct being considered by the Executive Board, and the proposed response to this consultation outlined in Appendix B to this report; and

2.2 the Strategic Director (Corporate and Policy) be authorised to draw up and submit a response to the Consultation Paper in respect of the Members' Code of Conduct as outlined in Appendix A to this Report.

3.0 SUPPORTING INFORMATION

3.1 There are separate codes of conduct for Members and officers. Both of these codes appear in the Halton Constitution.

3.2 The Members' Code includes the Ten Principles of Public Life recommended in the Neil Report into Conduct in Public Life (see Appendix C). These Principles have been prescribed by law. Halton's version follows the national model. Members accepting office agree to be guided by the Code. Breach of the Code is dealt with under the Standards Committee process.

3.3 The officers' Code of Conduct has never been prescribed by law. There has been a national model recommended at one time by the Local Government Management Board (LGMB). It is substantially that model which has been approved by the Council and has been included in the Constitution (Appendix D). Breach of the Code can form the basis for engaging the disciplinary code. Officers are expected to comply with the Code and in recent years employees' Particulars of Employment have explicitly required them to comply with its terms.

- 3.4 Officers are subject to various Codes. For example carers who are Council employees are already subject to a national Code. Those employees who belong to particular professional bodies (surveyors, accountants and others) are required to comply with the Codes imposed by those bodies. Compliance with those professional body codes is not *directly* enforceable by the Council.
- 3.5 Since the Local Government Act 2000 there has been power to establish a national statutory code of conduct for officers. Unlike the Members' powers the Government has refrained from making a national code although there was some consultation on its possible content in 2004. The 2000 Act incorporates by law any national model employee code approved under the Act by DCLG directly into employees' contracts of employment. In the event that the draft Officer Code is introduced in its current form it would be necessary to make adjustments to harmonise the detailed Halton officer code with the values listed in the new National Officer Code. This is quite feasible.
- 3.6 A new Consultation paper was published by DCLG in October 2008. Any comments must be received by the Department by 24 December 2008. This paper: "Codes of Conduct for local authority members and employees", invites responses to 22 questions.
- 3.7 The paper can be inspected at:-
<http://www.communities.gov.uk/documents/localgovernment/doc/562D53.doc>
- 3.8 The covering letter is at:-
<http://www.communities.gov.uk/documents/localgovernment/doc/982078.doc>
- 3.9 In **the very broadest outline** the Government's Consultation paper invites comments on proposals to:-

Members

- Make the code apply expressly to Members acting in non-official capacity to the extent that they commit serious criminal offences in their private lives whether in the UK or elsewhere.
- Make some changes to the detailed wording of the Code.
- Halt ethical investigations under the Code until outcome of any related criminal investigation/proceedings.
- Allow two months for Members to decide whether they wish to sign up to the new Code after its introduction
- Add a new General Principle: Members should not engage in conduct which constitutes a criminal offence.

Officers

- Introduce for the first time a national mandatory Code of Conduct in the form of Core Values that will apply to limited categories of Council employee.
- Apply the new officer code to parish council employees.

3.10 Consultation on the Officers' Code of Conduct falls within the remit of the Executive Board and, as such, the Board has been requested to consider this at its meeting of 20th November 2008 and to delegate authority to the Strategic Director (Corporate and Policy) to respond as outlined in Appendix B of this report. The decision of the Standards Committee will be reported to that meeting.

4.0 POLICY IMPLICATIONS AND COUNCIL'S PRIORITIES

4.1 The proposed basis for reply to the paper is consistent with the Council's policies and Strategic Priorities.

5.0 OTHER IMPLICATIONS

5.1 A clearer and more practical set of Codes of Conduct is to be welcomed and will provide a more secure foundation for the provision of economic effective and efficient provision of services on a transparent, accountable and human rights compliant basis.

5.2 Any amendments to be made to the Council's constitution as a result of this consultation will need to be referred to Full Council for approval.

6.0 RISK ANALYSIS

6.1 A more resilient and practical approach to Codes of Conduct will minimise risk.

7.0 EQUALITY AND DIVERSITY ISSUES

7.1 The Code addresses equality and diversity and an improved version will enhance the Council's policy and practice in this area and further its IDEA accreditation.

8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Contact Officer
Consultation Paper	Internet address given above	Mark Reaney

APPENDIX A

Halton Borough Council - Proposed Response to Model Code Consultation

This is organised by reference to the question numbering scheme extracted from the Consultation paper.

MEMBERS' CODE

1

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

It is agreed that the members' code should apply to a member's conduct when acting in a non-official capacity.

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.

The definition of 'criminal offence' is acceptable.

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.

The definition of 'official capacity' is acceptable.

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?

It is agreed that the members' code should only apply where a criminal offence and conviction outside the UK would have been a criminal offence if committed within the UK.

5

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

Investigations into breaches of the Code involving alleged criminal activity should be placed on hold by the Standards Committee and the Standards Board until the criminal investigation and justice process is complete. However there should be scope for the Standards Committee to choose to

suspend a Member until the outcome of the criminal process where issues of confidence in and effective working of the Council are jeopardised by the presence and functioning of the councillor as an elected member. During the period of suspension all rights of acting would be placed on hold. This should not be subject to appeal but must of course be subject to judicial scrutiny.

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? If so, please could you provide details of your suggested amendments?

The proposed wording is satisfactory and no other suggestions are proposed.

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?

There are no aspects of conduct in a Members' official capacity that should be removed from the Code. A proportionate approach is adopted in keeping with the importance of confidence in integrity in public life.

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.

There are no other aspects of conduct in a Member's official capacity that should be included in the Code.

9

Does the proposed timescale of two months, during which a member must give an 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?

Two months appears to be a more than adequate period within which Members can consider whether they would agree to observe the Member Code.

Amendments to the General Principles

10

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

The addition of a new general principle saying that Members must not engage in conduct that constitutes a criminal offence is acceptable.

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?

The definition of ‘criminal offence’ is acceptable.

12

Do you agree with this definition of ‘official capacity’ for the purpose of the General Principles Order?

The definition of ‘official capacity’ is acceptable.

APPENDIX B

Halton Borough Council - Proposed Response to Model Code Consultation

This is organised by reference to the question numbering scheme extracted from the Consultation paper.

OFFICER CODE

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?

A mandatory model code of conduct should apply to all local government employees and should in accordance with the Local Government Act 2000 be applied by law automatically and without variation to the contracts of employment of all local government employees.

14

Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

The Code should be applied alike to all employee groups within the Council. Standard values should arch over all categories of staff.

15

Are there any other categories of employee in respect of whom it is not necessary to apply the code?

The Code should apply to all local government employees in much the same way that the carers code applies regardless of seniority

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?

The Core values of the Officer Code as stated are adequate and no need for additions or deletions.

17

Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?

Employees requiring to comply with the Code of Conduct should not be restricted to those at a certain grade or those exercising delegated powers. A

framework of conduct recognised by reference to national standards should be asserted from the outset of an employee's career. The practical implications of the Code may vary depending on where the employee stands and their level of seniority but the standards should be common and should permeate the officer cadre.

18

Should the code contain a requirement for qualifying employees to publicly register any interests?

Yes the Code should require employees to register their interests publicly but this aspect should be restricted to those who are on salary scale prescribed for politically restricted posts.

19

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

The registrable categories of interest as set out in the consultation paper are appropriate and no other categories are suggested for inclusion.

20

Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?

All the pertinent aspects of the Members' Code have been reflected into the Officer Code.

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?

The restrictions imposed are proportionate to the standards of public conduct.

22

Should the employees' code extend to employees of parish councils?

Parish Councils can hold major budgets. Halton is not accustomed to its Parish Councils' holding such budgets but it is quite possible that the existing complement or indeed new parish councils may achieve larger scale resources and staffing. Their officers should be subject to the same Code as officers of Principal Councils such as Halton.

APPENDIX C

THE EXISTING TEN PRINCIPLES OF PUBLIC LIFE – MEMBERS

The General Principles

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to uphold the law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

NOTE

Under the Consultation document proposals a further principle would be added:-

Duty to abide by the law

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

APPENDIX D

OFFICERS' CODE – CURRENT VERSION

Officers' Code of Conduct

THE EMPLOYEE CODE

1. Introduction

(a) This Code has been drawn up broadly in line with the Local Government Management Board's draft Code of Conduct.

(b) The public is entitled to expect the highest standards of conduct from all employees who work for local government and to expect that their conduct should never be influenced by improper motives.

(c) This Code has been formulated to provide a set of standards of conduct expected of employees at work and the link between that work and their private lives.

(d) The Code takes into account the requirements of the law and the provisions on official conduct in the appropriate national conditions of service.

(e) The Code applies to all Council employees. Those employees involved in processing applications for services or resources, licences or statutory consents and those involved in the procurement of goods and services need to pay particular attention to the Code.

(f) Any alleged breaches of the Code maybe dealt with under the Council's disciplinary procedure.

(g) If employees are in any doubt about any of the provisions of the Code they should seek advice from their Chief Officer.

2. Standards

Employees are expected to give the highest possible standard of service to the public, and where it is part of their duties, to provide appropriate advice to other employees and Members with impartiality. Employees should bring to the attention of the management any deficiency in the provision of service and must report any impropriety or breach of procedure to their senior officer.

3. Disclosure of Information

(a) The law requires that certain types of information must be available to Members, auditors, government departments, service users and the public.

(b) Under the Local Government Act 1972 the public have a right to see certain information. In most circumstances these rights are related to Committee/Board reports and background documents.

(c) Employees must not use any information obtained in the course of their employment for personal gain or benefit, or pass it onto others who might use it in such a way.

(d) Only employees authorised by their Chief Officer to do so may talk to the Press, or otherwise make public statements on behalf of their department. Any employee contacted by the Press should pass it to their senior officer

who will in normal circumstances refer the matter to the Corporate Communications Division who will deal with it.

(e) If employees consider that the non-disclosure of certain information is contrary to the wider public interest, they should advise their Chief Officer or the Chief Executive of the information and the issues concerned.

4. Political Neutrality/Activity

(a) Employees serve the Council as a whole. It follows, therefore, that they must serve all Members not just Members of any controlling group, and must ensure that the individual rights of all Members are respected.

(b) Some senior employees will be expected, within the Council's guidelines, to advise political groups. These employees have a duty to advise minority groups as well as the controlling group.

(c) Some employees, who are normally those in more senior positions, are in politically restricted posts and by law are prevented from taking part in certain political activities outside their work. Employees who are in this position should have been told of this in writing and of the rules for claiming exemption, but any employee who is any doubt about their position should contact their Chief Officer.

(d) If an employee is in any doubt about whether an activity is political activity and covered by these rules they should seek advice from their Chief Officer.

(e) It is important that all employees are aware of their position in terms of political activity because if these statutory provisions are breached this may constitute a breach of the Contract of Employment which may be dealt with under the Council's disciplinary procedure.

(f) Employees, whether or not politically restricted, must follow every lawful policy of the Council and must not allow their own personal or political opinions to interfere with their work.

5. Relationships

(a) Members

Some employees are required to give advice to Members as part of their job and mutual respect between employees and Members is essential to good local government.

(b) The Local Community and Service Users

Employees must always remember their responsibilities to the community they serve and ensure courteous, efficient and impartial service delivery to all groups and individuals within the community.

(c) Contractors

All relationships with contractors or potential contractors must be made known to the appropriate Manager. Orders and contracts must be awarded in line with the Council's financial regulations.

Employees who engage or supervise contractors or have an official relationship with contractors and have previously had or currently have a relationship in a private or domestic capacity, must declare that relationship to the appropriate manager.

6. Outside Commitments

(a) An employee's off-duty hours are their personal concern but they must not place themselves in a position where their employment and private interests conflict. The Council would not wish to preclude employees unreasonably from undertaking additional work unless that work conflicts with or detrimentally affects the Council's interests or in any way weakens public confidence in the conduct of the Council's business, or in any way affects the ability to fulfil the Contract of Employment.

(b) However, officers above scale 6 are expected to devote the whole of their paid employment work to the Council and must not engage in any other business or take up any other additional appointment for financial gain without the agreement in advance of their Chief Officer.

(c) If agreement is given employees must be made aware that no outside work of any sort should be undertaken in the workplace and use of facilities, e.g. telephones, photocopying is forbidden. Breach of this provision may result in a disciplinary offence.

7. Personal Interests

(a) Employees must declare to their line manager, non-financial interests that they consider could bring conflict with the Council's interests (e.g. acting as a school governor within schools maintained by the Council, involvement with an organisation receiving grant aid from the Council, membership of an NHS Trust Board, involvement with an organisation or pressure group which may seek to influence their authority's policies). Membership of a trade union is exempted from this requirement.

(b) Employees must declare any financial interest, which could conflict with the Council's interests.

(c) Employees who have an interest, financial or non-financial, should not involve themselves in any decision on allocation of Council services or resources from which they, their friends or family might benefit, and should ensure that the matter is referred immediately to their line manager (e.g. allocation of Council housing or assessment of housing benefit).

8. Equality Issues

Employees have an obligation to ensure that policies relating to equality issues as agreed by the Council are complied with, as well, of course, as the requirements of the law. All members of the local community, customers and other employees have a right to be treated with fairness and equity.

9. Separation of Role During Tendering

(a) Employees should be clear on the separation of client and contractor roles within the Council. Senior employees who have both a client and contractor responsibility must be aware of the need for accountability and openness.

(b) Employees in contractor or provider units must exercise fairness and impartiality when dealing with all customers, suppliers, other contractors and sub-contractors.

(c) Employees who are privy to confidential information on tenders or costs for either internal or external contractors must not disclose that information to any unauthorised party or organisation.

(d) Employees must ensure that no special favour is shown to current or recent former employees or their partners, close relatives or associates in awarding contracts to businesses run by them or employing them in a senior or relevant managerial capacity.

10. Corruption

It is a criminal offence for an employee to receive or give any gift, loan, fee, reward or advantage for doing or not doing anything or showing favour or disfavour to any person in their official capacity. It is for the employee to demonstrate that any such rewards have not been corruptly obtained.

11. Use of financial resources

Employees must ensure that they use public funds entrusted to them in a responsible and lawful manner, ensuring value for money to the local community and avoiding legal challenge to the Council.

12. Gifts and Hospitality

(a) The Local Government Act 1972 forbids acceptance by any local government officer of any fee or reward other than proper remuneration and contravention of this provision is a criminal offence.

(b) Officers should be aware of the Prevention of Corruption Act 1916 which states that the giving of any money, gift or consideration to any officer by a person trying to obtain a public contract is deemed to have been given corruptly unless the recipient proves to the contrary.

(c) The offers of gifts to officers from persons who have or may seek to have dealings with the authority should be viewed with extreme caution. Officers should consider how the acceptance of such a gift would be viewed by a member of the public. Officers are personally liable for all decisions connected with the acceptance of gifts or hospitality and for avoiding the risk of damage to public confidence in local government.

(d) The only exceptions to this rule are small gifts of nominal value:-

- given by way of trade advertisements to a wide range of people, e.g. inexpensive calendars, diaries, tape measures and similar articles for use at work.

- on the conclusion of a courtesy visit, for example to a factory or other premises.

(e) Any hospitality given or received by officers should be justified as in the public interest. The hospitality given should be on a scale appropriate to the occasion.

(f) Offers of hospitality must be refused where a suggestion of improper influence is possible. Special care must be taken where hospitality is offered by a person having or seeking business with, or a decision from, the Council.

(g) Each officer who is offered a gift or hospitality shall, before any action is taken, discuss the offer with his/her line manager, except in the case of gifts or hospitality of a nominal value.

(h) In the case of the Chief Executive, before any action is taken, he will discuss the offer with the Strategic Director – Corporate and Policy and in his absence with the Monitoring Officer.

(i) Each Chief Officer shall maintain a gift and hospitality register. This register shall record:-

- what gift/hospitality was offered and to whom;
- by whom it was offered;
- when and with whom the offer was discussed;
- the decision whether or not to accept the gift/hospitality.

(j) In the event that it is decided it would be inappropriate to accept the gift/hospitality, the officer to whom it was offered will inform the offeror accordingly, explaining the reasons for refusal.

13. Use of services, etc. of firms dealing with the Council

(a) If any officer has good reason to believe that any offer of preferential terms is designed to promote a firm's interest in its dealings with the Council, then the offer should be refused and the matter treated as if a gift had been offered. The above Standing Orders would then apply.

(b) Caution should be exercised by officers using services offered by firms which they know have dealings with the Council. Officers must ensure that goods or services bought from such firms are at a price readily available to the public.

14. Sponsorship - Giving and Receiving

(a) Where an outside organisation wishes to sponsor or is sought to sponsor a local government activity, whether by invitation, tender, negotiation or voluntarily the basic conventions concerning acceptance of gifts or hospitality apply. Particular care must be taken when dealing with contractors or potential contractors.

(b) Where the authority wishes to sponsor an event or service neither an employee nor any partner, spouse or relative must benefit from such sponsorship in a direct way without there being full disclosure to an appropriate manager of any such interest. Similarly where the Council through sponsorship, grant aid, financial or other means, gives support in the community, employees must ensure that impartial advice is given and that there is no conflict of interest involved.

15. Confidentiality

As an Officer of the Council you will occasionally acquire information which has not been made public and is confidential. You should not disclose this information to the public without the express approval of your Chief Officer. You should never disclose any information to personally advance yourself or someone known to you, or to the disadvantage or discredit of the Council or anyone else.

ADDITION TO OFFICER CODE IF CONSULTATION PAPER PROPOSALS APPROVED BY GOVERNMENT

Adjustments would be necessary to rationalise the current officer code AROUND these principles.

Proposed core values

The model employees' code: core values for all employees

General principles

The public is entitled to expect the highest standards of conduct from all local government employees. The role of such employees is to serve their employing authority in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

Employees are accountable, and owe a duty to, their employing authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political neutrality

Employees, excluding political assistants, must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

Relations with members, the public and other employees

Mutual respect between employees and members is essential to good local government and working relationships should be kept on a professional basis. Employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently and without bias.

Equality

Employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

Employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

Personal interests

An employee must not allow their private interests or beliefs to conflict with

their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to do business with the authority or which would benefit from a relationship with that authority. Employees should not accept benefits from a third party unless authorised to do so by their authority.

Whistleblowing

Where an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the model code of conduct for employees, the employee should report the matter, acting in accordance with the employees' rights under the Public Interest Disclosure Act 1998 and with the authority's confidential reporting procedure or any other procedure designed for this purpose.

Treatment of Information

Openness in the dissemination of information and decision making should be the norm in authorities. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of staff

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

Investigations by monitoring officers

Where a monitoring officer is undertaking an investigation in accordance with Part III of the Local Government Act 2000 and associated regulations, employees must comply with any requirement made by that monitoring officer in connection with such an investigation.