

**BABERGH DISTRICT COUNCIL**

**FROM:** Acting Head of Legal and Administrative Services

**REPORT NUMBER**    **E261**

**TO:**        STANDARDS COMMITTEE

**DATE OF MEETING**    3 February 2006

**ODPM DISCUSSION PAPER ON “STANDARDS OF CONDUCT IN ENGLISH LOCAL GOVERNMENT: THE FUTURE”**

1.    **SUMMARY**

The Government has now published a Discussion Paper which sets out its vision for review of the Code of Conduct for Members. The Paper follows on from recommendations to the ODPM which Ministers had asked the Standards Board to conduct. The Paper additionally includes the Government proposals for a Code of Conduct for employees.

2.    **RECOMMENDATIONS**

- 2.1    That the content of this report and the ODPM Discussion Paper on ‘Standards of Conduct in English Local Government: the Future’, be noted.
- 2.2    That the Monitoring Officer be authorised to respond to the ODPM on the Discussion Paper with a summary of the Committees views.

The Committee is able to resolve this matter

3.    **FINANCIAL IMPLICATIONS**

- 3.1    None.

4.    **KEY INFORMATION**

- 4.1    On 15 December 2005, the ODPM published its Discussion Paper containing the Government’s proposals for review of the Members Code of Conduct. This report seeks to highlight the key issues set out in the Discussion Paper which is annexed as Appendix 1. The main areas earmarked for review are the transfer of misconduct allegations from the Standards Board to standards committees who would assume responsibility for investigating and determining most cases. The Standards Boards would assume a strategic, advisory and monitoring role and investigate only the most serious of allegations.
- 4.2    Further proposed changes involve the operation and composition of standards committees and a clearer, simpler Code of Conduct. A Code of Conduct for local government employees is also suggested.

5.    **LOCAL DECISION – MAKING**

- 5.1    The initial assessment of all misconduct allegations will be undertaken by standards committees, rather than the Standards Board. The Monitoring Officer will undertake the investigation and the Committee will then make the determination as part of a more locally – based regime. Only the most serious cases will be referred to the Standards Board. There is also suggestion for allowing more scope for local mediation or other intervention falling short of investigation.

- 5.2 The intention is for monitoring officers and standards committees to become central to investigations and also to promote and champion high standards to ensure that they become embedded as an intrinsic part of the Councils culture.
- 5.3 The Government recognises that there will be a need for capacity building measures and support to be provided to standards committees before assuming these new responsibilities. It appears that the support will take the form of advice, guidance and training. It is emphasised that Councils themselves will need to do more to ensure that their Monitoring Officer and Standards Committee are properly supported and able to fulfil their respective functions.

## 6. **STANDARDS COMMITTEES**

- 6.1 Standards committees will continue to have a mix of independent, parish/ town Council and local members but will be chaired by an independent member of the Committee. Independent members will need to reflect a balance of experience and possess the skills and knowledge required to undertake the increased responsibilities proposed for committee. Guidelines may accordingly be set for the recruitment of independent members although there are no proposals to increase the ratio of independent members required on a Committee. The importance of parish interest being represented on the Committee is acknowledged.
- 6.2 Committees will report to the Standards Board on how they have undertaken their role, which may be done through the submission of annual reports. The role of the Standards Board will become one of defining the expectation of the standards regime and ensuring effectiveness of performance of monitoring officers and standards committees. The Board will issue guidance on roles and responsibilities prior to the new regime coming into effect and thereafter, it will ensure effective compliance.
- 6.3 The Committee will only be able to refer the most serious of cases to the Standards Board for investigation, but the Board may refuse to except a case if it considers that it would be better handled locally and the Committee is merely seeking to avoid dealing with the allegations. However, if the Board considers that the performance of a Standards Committee is unacceptable, then it may withdraw its powers to deal with cases which will instead be handled by the Board itself. Committees will be given the power to impose higher penalties to reflect the need to address more serious cases.
- 6.4 The ODPM will continue to work with the Board to consider the most effective way to promote joint working by standards committees, e.g. county-wide standards committees assessing parish cases. There may be a statutory requirement imposed for standards committees to co-operate or even require them to work together jointly.
- 6.5 It is also proposed to abolish the post of Independent Adjudicator and to delegate his role to standards committees. This post was created by the Local Government and Housing Act 1989 with the following remit:-
- To consider applications from Council employees for exemption from political restriction in respect of their posts.
  - Where appropriate, to issue directions requiring a Council to include a post in the list of politically restricted posts that it maintains.
  - To give general advice, following consultation with appropriate parties on the application of criteria for designation of a politically restricted post.

- 6.6 The intention behind the provisions on politically restricted posts is to ensure that Council employees who hold posts involving duties of a politically sensitive nature cannot, at the same time, become or remain a member of another Council. This policy stems from the long established tradition that local government officers involved in advising elected members should be seen to observe a policy of political neutrality. Broadly speaking the employees who are politically restricted are the Chief Executive Officer, the Monitoring Officer, Political Assistants and other persons identified in the Councils list of politically restricted posts. These are normally officers involved in giving advice on a regular basis to the Council or any of its Committees or Sub-Committees or publicly presenting and explaining Council policy.
- 6.7 Prior to implementation of the new regime, the Board will copy information on all local investigations to monitoring officers so as to share experiences on how cases might be effectively dealt with. The Board will also work with authorities on the development of their knowledge of their issues and their capacity to deal with cases.
- 6.8 The Government accepts that the powers provided to Standards Committees should be broadly in line with those contained in the Graham Committee report which recommended that standards committees be able to decide:-
- Whether to investigate a complaint or not (and if not whether mediation or conciliation between parties or general action in relation to awareness and understanding of the Code is appropriate).
  - Which complaints are of such potential seriousness that they should be referred for national investigation.
  - Whether, following a local investigation, a complaint should be referred to the Adjudication Panel; or
  - To hear and determine the case, with an appropriate penalty where necessary; or
  - Accept that no breach has occurred; or
  - To instruct the Monitoring Officer and/or Chair of the Standards Committee to instigate mediation or conciliation between the parties or take general action in relation to awareness and understanding of the Code.

## **7. CODE OF CONDUCT FOR LOCAL GOVERNMENT EMPLOYEES**

- 7.1 The Government proposes to implement a Code of Conduct for Officers which will set out general principles of conduct with the Council taking ownership of operation of the principle locally. It is intended that this will be incorporated into employees contracts of employment. Babergh already has a Member and Officer Protocol which is incorporated within employees contracts of employment and so this may not be anything more radical than present. The Local Government Information Unit has however expressed concern about how the Code would sit alongside other codes of conduct that local government employees are covered by and how it will relate to the grievance and disciplinary procedures.

## 8. **DUTIES UNDER THE CODE OF CONDUCT**

- 8.1 The provision in the Code requiring Members to report to the Board all allegations of breaches of the Code by other members will be deleted in order to discourage trivial complaints. The Board will work with political parties to reduce politically-inspired complaints. It will be a matter for standards committees to make decisions on whether cases should be referred to the Standards Board for action (which will presumably then be referred back to the Monitoring Officer for Investigation prior to determination by the Committee). Complainants and witnesses will be protected by specific provision in the Code making it a breach to intimidate such persons.
- 8.2 There will not be specific provision for it to be a breach of the Code to raise false allegations, as this may discourage Members from bringing forward substantive allegations.
- 8.3 Amendments will be made to allow the 10 general principles of public life to be published alongside the Code which differs slightly from the Standards Board recommendation that the principles be incorporated as a preamble to the Code.
- 8.4 The duty not to bring the Council into disrepute will continue to apply to member's private lives, but this will be restricted to certain behaviour outside official duties that would be regarded as unlawful.
- 8.5 The Government has rejected the Board's recommendation that a failure to register an interest should be treated as a matter for local investigation and determination. The current position will be retained so that each case can be considered on its merit.
- 8.6 The problematical area of personal and prejudicial interest is to be resolved by a narrowing of the definition of a 'personal interest' and members being required to declare an interest at the time of speaking on a relevant issue (rather than at the start of the meeting). It appears that personal interests will exclude membership of other public bodies. Additionally, where a member has a prejudicial interest s/he shall be allowed to remain in the meeting to speak on the item, but should withdraw before the vote. It is not entirely clear from the Government response whether this latter provision will be limited to prejudicial interests arising from representation of a body or campaign.
- 8.7 There will be specific provision in the Code against bullying.
- 8.8 In light of the Freedom of Information Act 2000, the public interest defence will be explicitly included in the Code so that it will not be a breach of the Code for a member to disclose confidential information that the Council is unlawfully withholding.

## 9. **TIMESCALES**

- 9.1 No date has been specified for implementation of the new regime as the Government wishes to consult with key stakeholders on attaining a realistic timetable and changes will in any event be dependant upon Parliamentary time. However, recent communication from the Standards Board indicates that new legislation is to be enacted in 2006 and to take effect in 2008.

## 10. **APPENDICES**

Appendix 1 – Standards of Conduct in English Local Government: The Future

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