



Leicester
City Council

WARDS AFFECTED
All Wards

**FORWARD TIMETABLE OF CONSULTATION AND MEETINGS:
STANDARDS COMMITTEE**

12TH NOVEMBER, 2008

PUBLIC/ PRIVATE LIFE GUIDANCE

REPORT OF THE SERVICE DIRECTOR - LEGAL SERVICES

1. PURPOSE OF REPORT

To enable the Committee to review the current position regarding application of the Code of Conduct for Elected Members to private as well as public life.

2. RECOMMENDATION

The Committee is asked to note the current position as set out in this report and to consider whether any further support and guidance is required for members at this stage.

3. REPORT

Following the 2006 Local Government White Paper and introduction of the 2007 Members' Code, the Local Government and Public Involvement in Health Act, 2007 (LGPIHA) included provisions aimed at clarifying the law in relation to the application of the conduct regime to the conduct of members in their non-official capacity.

The need to clarify what conduct in a member's non-official capacity is covered by the Members' Code arose as a consequence of the Livingston judgment in 2006.

Ken Livingston, then Lord Mayor of London, appealed to the High Court against a decision of the Adjudication Panel for England that he had failed to comply with the Code of Conduct of the Greater London Authority relating to an incident involving a journalist.

A full copy of the High Court judgment is available for any member/officer interested.

The Court found that conduct outside a member's official capacity can be covered by the Code, for example if they misuse their position as a member. However, the Court found that a Councillor who is convicted of a criminal offence will not be caught by the Code if the offence has nothing to do with their position as a Councillor.

The Court noted that Section 80 of the Local Government Act, 1972 has provided for disqualification for election to a local authority of those who have had within five years before the date of election been convicted of any offence which has resulted in a sentence of three months imprisonment (whether or not suspended) or more. The Court felt that Parliament could have provided that conviction of any offence carrying imprisonment should lead to consideration of some punitive action by the Standards Board.

The end result was that the High Court decided to allow the appeal and that the Tribunal's finding that the appellant i.e. KL had failed to comply with the Code should be set aside.

As was made clear by Ministers during the passage of the LGPIHA, 2007, the government has considered 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 in Local Authority members and Local Government as a whole.

Section 183 of the LGPIHA, 2007 inserted into section 50 of the Local Government Act, 2000 a requirement for the Secretary of State to specify which provisions of the members' Code apply in relation to a member's conduct when acting in an official capacity and which provisions apply when not acting in an official capacity. A provision may only be specified to apply to members' conduct when not acting in an official capacity if the conduct it prohibits constitutes a criminal offence. A power in section 50 of the Local Government Act, 2000 permits the Secretary of State to define for the purpose of the members' Code which is meant by a 'criminal offence' and what is meant by 'official capacity'.

The recent consultation paper which proposes amendment to the Code of Conduct includes a section covering conduct of members in their non-official capacity and contains the following provision:

Members must not bring their office or Authority into disrepute by conduct which is a criminal offence.

The consultation paper proposes that "criminal offence" be defined as any criminal offence for which a member has been convicted in a criminal court but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.

There is a view that this definition should be broadened to include any conviction where the Council is the enforcing Authority.

The consultation paper also proposes that 'official capacity' be defined as being engaged in the business of an Authority, including the business of the office to which a member is elected or appointed or acting, claiming to act or giving the impression that the member is acting as a representative of the Authority.

Application of the current Code to private and official capacity is limited to three paragraphs of the Code:

- 3. Intimidating of witnesses etc.
- 5. Bringing the office or authority into disrepute.
- 6a. Conferring advantage or disadvantage.

And in all these three cases it **only** applies to private life if the conduct constitutes a criminal offence for which the member has been convicted.

The Standards Board for England has confirmed that further guidance will be provided following the current consultation exercise which will lead to a revision to the Code of Conduct. Until then members and officers will need to apply the current Code as summarised above.

4. FINANCIAL, LEGAL AND OTHER IMPLICATIONS

5.1. Financial Implications

None

5.2 Legal Implications

These are covered in the report.

5. BACKGROUND PAPERS – LOCAL GOVERNMENT ACT 1972

Relevant legislation and guidance.

6. CONSULTATIONS

Charles Poole, Service Director – Democratic Services
Liz Reid-Jones, Head of Democratic Services

7. REPORT AUTHOR

Peter Nicholls, Service Director – Legal Services, x6302