



William Tandoh
Democracy and Local Government Division
Office of the Deputy Prime Minister
Zone 5/A1
Eland House
Bressenden Place
London
SW1E 5DU

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Dear Sir/Madam,

A Model Code of Conduct for Local Government Employees

This letter sets out the joint response of the Employers' Organisation for Local Government ('EO') and the Local Government Association (LGA) to the recent consultation document on the draft statutory code of conduct for local government employees.

The LGA represents principal local authorities in England and Wales, together with passenger transport authorities, fire and national park authorities, and some police authorities.

The EO is a company limited by guarantee, which carries out the functions of an employers' organisation. The EO Board's membership presently comprises representatives of the Local Government Association and the Welsh Local Government Association. The EO represents the interests of all 410 local authorities in England and Wales and also provides the employer side secretariats for national collective agreements covering fire authorities and police authorities.

The Response

We answer the questions as set out in the consultation document below.

Q.1 Is the Government right to exclude teachers, firefighters and community support officers?

Although problems may arise if more than one code applies to a group of staff, this is the reality of the situation for most local authority employees who will be subject to local codes and other sector specific codes, such as that of the General Social Care Council.

We understand that the suggested firefighter exclusion is based on the fact that they were covered by The Fire Services Discipline Regulations 1985, but these have now been repealed and replaced with a nationally agreed disciplinary procedure. In any event the Discipline Regulations were not a code of conduct.

It would therefore seem that there is little argument for excluding firefighters from the statutory code, as the broad general principles should apply equally to this group of staff.

We understand that the proposed exclusion of teachers is based on an assumption that they are covered by their own code of conduct. However, there is not a code that covers the same ground as the proposed statutory code.

In respect of community support officers, we are aware that discussions have been ongoing for some time in relation to the adoption of a code of conduct which would apply to both uniformed police officers and support staff in police authorities. This work will have an impact on the question of coverage and will require further discussion between the Home Office and the ODPM as part of the consultation process.

Q.2 Are there other categories of employee who should not be subject to the employees' code, for example, school support staff? If so, which categories, and why should they be excluded?

All local government staff are accountable to their employer and the majority of employees will be subject to conduct policies of some description. It is for this reason that the Employers' Organisation has argued that there is no need for a statutory code of conduct. However, these will not necessarily be consistent in their requirements, hence the Government's proposals for an underlying statutory code. If a statutory code is felt to be necessary then it is important that all employees of an authority are subject to the same code. This does not mean, however, that it will not be possible to apply and manage adherence to the code in a sensible way which can incorporate the responsibilities of the local education authority and the governing bodies.

Q.3 Do you agree that council managers should be subject to the same code as other employees?

A council manager is not in a fundamentally different position than other local authority employees as far as the principles set out in the draft code are concerned. Any further requirements that were deemed necessary in the particular circumstances of such employees could be included in their terms and conditions of employment.

Q.4 Should different rules, or a separate Code, apply to political assistants?

The main principles of the code apply equally to political assistants. However, political assistants are in a different position to other local authority staff due to the nature of their duties. This must be taken into account in the development of the code. Any provisions must be consistent with the principles adopted in relation to the political restrictions regime.

Q.5 Are the provisions relating to the use of public funds and property adequate to ensure effective stewardship of resources?

The above provisions will go some way to ensure the effective stewardship of resources. However, they will only do as much as a code of conduct can. The effectiveness of this clause will be dependent on the policies and procedures of local authorities. Authorities will have to ensure that they have appropriate provisions in place and that employees are made aware of their requirements.

Q.6 Is it appropriate for the code to impact on an employee's private life or should it only apply to an employee at work?

Any impact of the code on an employee's private life would have to be justified to comply with the Human Rights Act. The first part of this clause, as it is currently worded, could be challenged. The key aim of this clause should be to ensure that an employee does not allow their personal interests to affect their duty to the authority when carrying out their role. However, this clause could have the effect of providing that a local authority employee's personal interests can never conflict with the requirements of a local authority. There may be many cases where a local authority employee's private life is affected by the policy of a local authority. Any provision which could be interpreted as having the effect of depriving employees of a voice to protect their interests could be seen as disproportionate to the aim set out above. Consideration should therefore be given to redrafting this clause.

An authority would be provided with further protection where an employee's private interests did conflict with that of the authority in that the employee

should, where relevant, be placed under a duty to register an interest under clause 6.

Q.7 As with the members' code, should there be a standard list of interests and/or hospitality/benefits/gifts that must always be registered?

To ensure some consistency across authorities it would be sensible to have a standard list of interests and hospitality, benefits and gifts that must always be registered. Authorities should be able to add additional provisions to this list if they considered this necessary.

Q.8 If so, what should the list contain? Should it mirror part 3 of the councillors' code or be restricted to financial interests?

The impact of non-financial interests is potentially as great as that of any financial interest. The interests listed in the councillors' code would form a useful starting point. However, the list would obviously have to be amended to reflect the different roles of officer and member.

Q.9 Should such a list be available to the public?

There should be no significant difficulties with allowing the public access to the list of interests that must be declared. However, the register itself would contain details of an employee's private life. Allowing the public access to these details could be seen as being disproportionate to the aim that this clause seeks to achieve. The register of members' interest is available to the public, but there is a difference between the degree of privacy expected by a person who has entered public life and that expected by an employee.

It is presumed that the management of such a list would be the responsibility of the authority's monitoring officer, with members possibly having rights of access. The public's confidence in the integrity of the authority should be secured by the knowledge that an adequate system is in place to ensure that conflicts of interest are identified and appropriate action taken. Further more, managing public access to the list could lead to unwarranted bureaucracy for authorities.

Q.10 Alternatively, could the need for a list be restricted to officers above a certain salary, as applies, for example, to the current political restrictions regime?

There is a need for an adequate system to safeguard the interests and ensure the confidence of the public. However, to comply with the Human Rights Act, any requirement to register private interests should be proportionate. Applying this requirement only to officers above a certain salary or grade would go some way

to achieving this aim, although there will be a number of pitfalls. For example, salary levels will obviously vary across authorities, which may mean that officers in some authorities who are not in a position to influence decision-making will be obliged to make known aspects of their private lives. Conversely, in some cases, those officers who are in such a position, but earning less than the salary threshold, will have no such obligation.

It may be appropriate, therefore, to adopt other aspects of the political restrictions regime. For example, an employee who is caught by the salary level, but believes that their role does not justify a requirement to register their interests could appeal to the monitoring officer. Also, other criteria could be used to determine whether an employee who is not caught by the salary level should register their interests. For example, advising the authority on a regular basis or being in a position to influence decision-making. Authorities could then determine which posts should be subject to a requirement to register interests.

However, all staff should be under an obligation to declare an interest if a conflict does arise.

The requirement to register hospitality, gifts and benefits received as a result of employment should apply to all staff. The limit of £25 provided in the members' code would also be appropriate for employees.

Q.11 Should this provision be explicitly limited to interests, gifts etc, that may have a bearing on the way in which the functions of the authority are discharged by the employee?

The list should consist of issues which could potentially have a bearing on the discharge of the authority's functions by any employee, with all relevant employees being obliged to comply. A requirement to compile separate lists of interests relevant to each individual employee who would be required to register would be too onerous.

The requirement to register gifts, benefits and hospitality should apply in all cases where the value is above £25, where they are received as a result of employment. This should be the case whether or not they are viewed as having a bearing on the way in which the functions of the authority are discharged due to the risk of any adverse perception that this is the case.

Q.12 Does the proposal on the reporting of misconduct provide suitable protection for employees?

Employees are protected under the Employment Rights Act from being dismissed or subjected to a detriment for making a protected disclosure. This clause will add to this protection by reinforcing the obligation to treat employees who make disclosures using the authority's whistleblowing procedure fairly.

However, there may continue to be gaps in the protection afforded. An authority may not have a procedure, or an employee could make a protected disclosure without following the procedure.

It may also be appropriate for a corresponding provision to be provided in the members' code.

Q.13 Should the Code impose a duty on employees to report misconduct?

This question has caused some debate. A statement to the effect that employee's have a duty to report misconduct provides apparent simplicity. However, there are identifiable drawbacks if the duty to report were to be incorporated into the code of conduct and deemed into employees' contracts.

A contractual obligation which requires employees to report misconduct could place them in difficult and uncertain situations. Although the duty may on the face of it appear a clear and understandable obligation, the nature of the actions which employees would be contractually obliged to report are more difficult to define with clarity and therefore such a duty would be unsuitable for inclusion in an employment contract. Albeit founded on reasonably common understandings, the very concept of misconduct and the gravity of particular actions will vary from employer to employer and may not always be well defined in disciplinary procedures. This would create uncertainty for employees and managers. For example, employees may feel under an obligation to report every instance of seemingly inappropriate behaviour for fear that they themselves may be subject to disciplinary action. Managers may be unsure as to when employees should be disciplined for failing to report misconduct and it is possible that situations may occur where a number of employees are punished for the wrongdoing of a single individual. Therefore, such a clause has the potential to initiate conflict in the workplace and create a climate which would reduce the likelihood of effective teamworking.

In any event, employees are subject to the implied duty of faith which could place them under an obligation to report such matters in certain circumstances. For example, where the employee is in a senior position or where the misconduct is such that it could not reasonably be ignored.

On balance we remain unpersuaded of the need for the introduction of a contractual duty to report misconduct for the reasons given. From a practical perspective, we take the view that it is better to encourage reporting of serious issues via a whistleblowing procedure with the associated promotion of high standards of ethical conduct. The development, introduction and promotion of a confidential reporting procedure contributes to the development of a more positive, inclusive and healthy working environment. Most authorities have wisely already introduced such procedures which appear to be serving them well. We had hoped that the code of conduct would provide a clearer implied obligation on authorities which have not already done so, to introduce a

whistleblowing procedure, and we would urge the ODPM, in its publicity material and guidance on the code of conduct, to make all efforts to ensure that all authorities have such a procedure in place.

Q.14 Is 'friend' the appropriate term to use in the draft code? If so, should it be defined, and what should the definition be? (For example, a person with whom the employee spends recreational time outside the work environment, or actively shares a mutual interest.)

It is as important to cover friends within this provision as relatives. However, this does raise the difficulty of trying to identify those friendships which should be covered and those where it should not be necessary. There is room for debate as to whether 'friend' is the appropriate term. The clause should be aimed at preventing employees having an influence in important decisions relating to those to whom they may feel a particular obligation or interest, over and above a normal day-to-day amicable working relationship, or where there may be a perception that they may be so influenced. The term 'friend' may be too wide, therefore, a phrase which would cover a more restricted group should be considered. The consultation paper itself refers to 'close friend'. Obviously, the extent of coverage will depend on the meaning that is given to whichever term is chosen. Clear guidance would have to be given on this issue.

This also raises the issue of enmity as well as that of friendship. Should employees with strong negative personal feelings about a prospective employee also be excluded from the appointment process?

The other difficulty that will arise from this clause is the impact it could have on management arrangements in local authorities. There may be instances where it is impractical for a manager not to participate in the promotion of a member of their staff, for example. Therefore, consideration should be given to providing that this clause is not an absolute but a desirable requirement, with flexibilities being allowed where necessary. For example, there could be provision for a member of staff to declare a friendship or relationship, but still be permitted to participate in the process providing appropriate additional procedural safeguards apply.

Finally, it should be made clear either within the code or accompanying guidance that this clause only relates to decisions affecting individuals and does not affect a local authority employee's ability to be involved in decision-making relating to the above issues on a collective basis where an employee's relative or friend, or even they themselves, will be affected by the outcome.

Q.15 Does the phrase 'relative or friend' as defined above adequately cover all the relationships with which this part of the code should be concerned?

Although the phrase 'relative or friend' as ultimately defined could cover most of the relationships required, there may be occasions where a conflict of interest arises in other circumstances. For example, an employee may have connections with others which they feel places them under a particular obligation or where there could be the perception that this is the case. This would be most likely to arise in relation to any interests that an employee has registered under clause 6. An additional provision could therefore be added that would prevent an employee from taking part in a process which involved an employee or prospective employee who has a connection to an interest which the employee has registered.

Q.16 Do you have any comments on what arrangements might be appropriate for ensuring employees are informed about the code?

It will obviously be important to ensure that as many employees as possible know of the details of the Code, not least to further the aims of the Code, but also due to the fact that any failure to adhere to it could result in disciplinary action. There is also scope for confusion amongst employees as many authorities will have their own local code, and some staff will already be subject to other codes, such as that of the General Social Care Council. Therefore, it will be necessary to inform staff about the introduction of the new code and explain how it will relate to other codes that may apply to them.

It would be expected that authorities will amend their disciplinary rules to take account of the Code. This will require authorities to issue a notice of a change to the written statement of particulars of employment under section 4 of the Employment Rights Act. Provided authorities have sufficient notice of the final contents of the Code before it comes into force, issuing details of the change in particulars could be used as a way of informing staff of the details of the new Code.

It would also be useful to have other methods of informing staff, such as a leaflet which explains the purpose of the Code and gives employees guidance on the clauses. There could also be an internet version which would allow many local authority employees to access this information and would reduce costs.

General comments

The introduction of the statutory code of conduct will mean that authorities will have to address how the statutory code will affect any existing local conduct codes they may have. Authorities will also have to consider the interaction between the statutory code, their own code(s) and other codes to which certain

of their employees may be subject, such as that of the General Social Care Council.

It is imperative, therefore, that authorities have sufficient advance notice of the finalised version of the statutory code to allow them to consider these issues and develop and issue advice to their employees before the statutory code comes into force. We would ask the Government, therefore, to take this into account when considering the timeframe for the implementation of the code.

We are pleased to have the opportunity to respond to the consultation and I hope that our response proves of some assistance. Should you wish to discuss any of the matters raised or to seek clarification on any issue whether general or specific to local government please contact Kelvin Scorer, Employment Relations Adviser on 020 7296 6738 (e-mail kelvin.scorer@lg-employers.gov.uk).

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Rob Pinkham', with a stylized, cursive script.

Rob Pinkham
Executive Director