

Item No. 3 – Appendix 2

A Member's Random Preliminary Thoughts

In substance many of the policies behind the proposals are right-minded and the proposals to revise the code should be generally welcomed. Subject to hearing other people's views I vote positively in answer to questions 1 and

6 in Annex B to the consultation document issued last month by DCLG. The proposals summarised in questions 5 and 7 are directionally correct. I have no views to express on issues raised by question 3. I have substantive comments on questions 2, 4 and 8, set out in more detail below.

Secondly I make a couple of comments on preliminary matters.

First, I agree with many of the comments of Peter Keith-Lucas of Tonbridge &

Malling: the quality of drafting would not pass muster if it was alleged to be a piece of simplified tax drafting.

Secondly, even if the quality of drafting does improve there will be a need for the booklets produced by the English Standards Board explaining the new code to be of a considerably higher standard than those issued under the existing code, especially on all aspects of personal and prejudicial interests. Those booklets should ideally be written by someone who has no understanding either of local authority administration or of law but who has advanced skills in setting out for public consumption difficult issues simply and clearly: anyone who has an understanding of the issues already is unlikely to be able to spot all the points of difficulty that the Code on personal and prejudicial interests creates, especially for independent members of Standards Committees. I would add in parenthesis at this point that Ernest Gowers obtained a first class degree in classics from Cambridge and is thought to have learned his skills in plain English preparing national insurance booklets for public consumption just before the First World War. There is little point in having substantial aspects of a code of practice that councillors and independent members of Standards Committees, like myself, do not readily comprehend.

Finally I come to those issues on which I have substantive comments at this stage.

In answer to question 2, the proposed text which limits the proscription of activities in a member's private capacity to those activities which have already been found to be unlawful by the courts is not appropriate because the proscription is too narrow. Councillors who are not in breach of criminal law but who are socially dysfunctional and obstinate may bring their authority into disrepute, even if not technically acting as an officer of the council when their behaviour is inappropriate. I have in mind the circumstances of one case heard by the Sevenoaks Standards Panel in November. If the new code prevents that type of behaviour, especially when over a period of over ten years, being classed as being in contravention of the code, it will be inadequate for catching behaviour which members of the public, schoolchildren, other members of the parish council may all believe brings parish councils into disrepute. The proscription is narrow because political correctness, the scourge of modern life, results in The Standards Board for England not trusting local Standards Committees to exempt from the proscription certain lifestyle choices of councillors. I

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think local Standards bodies must be given more discretion to identify what does and what does not cause a councillor's private behaviour from causing him or his authority to be brought into disrepute.

Question 5 is not appropriate because certain types of gift can drive a coach and horses through the provision. If you are alleged to be in breach of the new provisions of the code of conduct having failed to register the gift of an expensive crate of wine, the defence would simply be that the value of wine should be assessed according to its value in the market place.

To sell alcohol requires a licence. Except in the unusual case of your having such a licence, you are prohibited from selling the wine in the market place. Consequently the value of the crate of wine is zero. Having successfully defended yourself from the allegation that you were in breach of the code for failure to register the gift, you will suggest to all potential donors that in future they make gifts of alcohol to you and your friends with impunity. The way is open to corruption without being within the scope of the local authority code. (I should add that those provisions in the tax code introduced around 1854 which brought within the charge to income tax income from an office or employment, the charge was extended to cover perquisites and benefits. In assessing the value of perquisites and benefits the courts assessed the value of the benefit according to its market value. It was not until after the Second World War that perquisites and benefits were assessed, by statute, according to the cost of the perquisite or benefit for certain employees and office holders, a rule which now extends to all employees and officeholders.) The proposal on gifts and hospitality should be reworded to provide a measure of value of gifts and hospitality. Perhaps the measure should be similar to that used for income tax purposes. To make the change more palatable, the limit for declaring gifts might be raised from £25 to £50. Toothless provisions in the amended code are to be avoided.

In answer to question 8, the better, more friendly, way to achieving gender-neutral drafting is to follow the example of the tax simplification project, which has produced some elegant re-drafting of tax legislation which makes for greater simplicity and which is also gender neutral. (When engaged on an early part of the tax simplification project, all who took part were told to expect an attempt at gender-neutral drafting of a section of the tax code. When we next met we spent an hour or so discussing technical issues relating to the tax charge generated by the simplification before being told that it had been drafted in gender-neutral format. There was no single reference to "him or her" anywhere in the text: redrafting had been done by changing the sentence order, and the fact that it was gender-neutral was not obvious to anyone present until the point was made by the member of the Treasury Solicitor's department who was leading the project.) The standard of drafting of the Code should be raised to avoid gender-neutral drafting which requires references to "him and her".

A Member's Initial Thoughts

Reporting Breaches (para 9, page 11/12).

I'm concerned that the removal of the requirement to report breaches will make life more difficult for potential complainants. The concern expressed about the current

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system (councillors making trivial allegations) is rather flimsy, and, in any event, could be dealt with by better, more specific training for councillors. We are likely to have a situation where complainants will be regarded as making malicious or politically-based complaints. The argument would be that, as there is now no requirement to report breaches, they are only doing so maliciously, to cause embarrassment, or for reasons of personal enmity. I feel that, on balance, the existing requirement should remain.

Definition of family and friends (para 13, page 13)

I agree with your comments that this redefinition may make matters worse. We are only just getting to grips with the current definition, and getting sufficient case information behind us, and this change is likely to re-open the problems of confusion which we have previously experienced..

Definition of Personal Interests (para14, page 13/14)

I think that the definition *"a personal interest only arises where a decision on it might be reasonably regarded as affecting the member to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward....."* almost begins to merge with the definition for a prejudicial interest, and is likely to make it more difficult for individual councillors to decide whether their interest is personal or prejudicial.

Participation in relation to Prejudicial Interests (para 19, page 16/17)

Whereas it may be reasonable to allow councillors to represent the cases/arguments of parishioners, it should be made abundantly clear that :

- that they are present only as a member of the public and sit in the public area;
- that, after making the representations, they would have to leave the meeting;
- that at no point should they be allowed to express their own views, or indicate that they are in agreement with the views of the parishioners they are representing;
- that they can be asked to provide details of the parishioners, who are asking for their views to be represented; (preferably this would be written proof), so that the position can be checked out.

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