Controller and Auditor-General's 'Good Practice Guide' for Local authority codes of conduct, June 2006

Key points

- The code is:

    o A prompt that requires councils to consider and determine what is acceptable behaviour

    o A reference point for members and a tool for educating new members

    o A governance guide

    o A risk management tool

- It is a statutory requirement to have a code, but it is generally up to the council whether the code is a set of aspirational statements or more of a rule book (or both). Much of the actual content of the code is up the council itself, but there are some minimum requirements. At a minimum, the code must set out:

    o the expectations and understandings adopted by the council about the manner in which members may conduct themselves while acting in their capacity as members, including material that relates to members' behaviour to one another, to staff and to the public; and

    o a general explanation of the LGOIMA and any other enactment or rule of law that is applicable to members. Further information about other laws that might be included is in the Guidance.[1]

- Other key topics that are recommended are:

    o general public sector ethical and governance principles;

    o roles and responsibilities of members;

    o decision-making principles and processes;

    o dealing with the news media;

    o gifts, hospitality expenses; and

    o use of a council's resources and facilities.

- A key role of the code is to help clarify the distinction between governance and management and to make clear the requirements about members' conduct in relation to staff: "*codes have an important role in reducing legal risk for councils in the area of employment disputes with their chief executives*"."[2]

- Members have a statutory duty to comply with their code. However, it is up to the council whether they also want to provide a process for enforcement and penalties.

---

[1] When adopting the code the council must also consider whether to require members to declare if they are an undischarged bankrupt (although this doesn't have to be stated in the code).
[2] At pg 5 (Summary).

- If the council does have an enforcement process, then the council needs to be willing to use and follow it. The process should be clear, fair and efficient. Most councils have a two-step process - with an investigation body first and then a decision on penalty made by the full council.

- The question of penalties is also up to the council. The council does not have the power to suspend or remove a member from the council or to impose a monetary penalty, but otherwise there is flexibility. Further information about the various penalties used nationally is included in the Guidance.

- A common issue identified in the Guidance is use of the code to try and deal with matters that are not truly matters of conduct or that are petty or trivial. The Guidance notes that "*the credibility of codes will be undermined if they are trivialised or abused, or overly politicised*".[3] To manage this, the Guidance recommends that codes allow for some sort of preliminary assessment of complaints and a discretionary power to dismiss those matters that do not warrant further action.

- The Guidance also notes that code is not a mechanism that should be used to interfere with robust debate. Matters of this sort should usually be dealt by the chair, using standing orders.

- When the code is invoked, councils should be mindful of managing the process fairly but efficiently. Factors that should be considered are:

    o Attempting to resolve matters that are raised informally and at the lowest possible level first. This means reserving the use of the formal enforcement and penalty process for the most serious of cases (and using a discretionary power to dismiss those that don't warrant further action). The guidance notes that a code "*does not have to grant members of the public (or any other complainant) the right to insist that any and every complaint must lead to the full enforcement process being invoked.*"[4]

    o Proactively managing the process to ensure a prompt and efficient response (while still paying careful attention to fairness).

    o Selecting appropriate personnel to undertake the process and using independent expertise where necessary. In particular, the Guidance notes that it may be better to use an independent external person to undertake an investigation, rather than staff or elected members.

- It will be important to include education about the code in the new member induction process and in the first briefing. Training on the code may also be helpful.

- Codes should be widely available to members, staff and the general public.

---

[3] At 5.26
[4] At 5.31