



14 July 2011

Submission to the Review of the Model Code of Conduct

About depa

depa is the union covering environmental and public health, building and planning professionals in local government. We have considerable experience in dealing with representing members who are the subject of allegations of breaches of the Code and also in representing members in making complaints under the Code of Conduct against councillor behaviour.

We were disappointed not to be consulted in the development of the 2005 Model Code and had a limited peripheral role in providing some observations leading to the June 2008 Model Code.

The purpose of this submission is to provide a brief summary of our concerns and request discussions with representatives of the Division in the development of any changes to the Code arising from this Review.

This submission makes no observations about the misuse of the Code by vexatious, rent or publicity seeking or political pointscoring councillors against other councillors. It restricts our interest to complaints against employees under the Code and complaints by employees against Councillors.

The current Code - allegations against employees

There is a tendency for lazy councils or HR managers to incorporate a general "breach of the Code of Conduct" into processes of investigating alleged unacceptable behaviour or performance. This adds a further dimension to what may be specific allegations and is done to add gravity to an already serious situation and increase the significance of the allegation. This should be discouraged.

Allegations against employees should specifically address the behaviour without any need for additional reference to the Code.

The current Code - allegations against Councillors

We have been involved in industrial disputes for more than a decade where councillors have ignored obligations to refrain from personal attacks or observations on staff in public meetings and particularly council meetings.

1. Those sections of the Code discouraging this form of behaviour should be strengthened and incorporated into councillor training. It is essential that councillors be aware that the public forum afforded by a public Council meeting is not an opportunity to grandstand or point score against staff who, in the circumstances of the meeting, are unable to protect or defend themselves. Explanatory notes should be provided which are capable of being understood by even the dimmest.

2. Mayors need to be reminded that their responsibility chairing a Council meeting obliges them to be conscious of the need to protect employees (whether that be in relation to the onerous obligations under the Occupational Health and Safety Act or generally under a council's duty of care) and to effectively control councillors behaving badly.
3. And general managers need to be reminded that if the mayor fails to properly control the meeting, then it is the general manager and not the employee being attacked, who needs to remind the mayor of the responsibility.
4. Provisions should be inserted in the Code to allow a general manager to refer Councillor behaviour regarded as unacceptable and a breach of the Code to an external conduct reviewer without a written complaint from an employee to them.

We have already experienced the reluctance of a general manager and an acting general manager to be the one making the complaint in writing for fear of the councillors concerned. And while we think it possible to make a complaint in writing on behalf of the staff, general managers may be reluctant to do so.

It should not fall to the employee concerned to have to make that written complaint when the general manager agrees that the behaviour was unacceptable and potentially a breach of the Code.

5. Councils need some assistance in identifying and selecting a panel to participate in the conduct review to ensure that panel members are aware of appropriate procedures, proper investigative practices, the provisions of natural justice and the importance of the timeliness and expedition of an investigation etc.
6. There needs to be some mechanism if an external conduct reviewer fails to discharge their obligations properly - sometimes it's hard in rural areas to find members of the panel without relationships or potential conflicts of interest or the time to allocate to an investigation which needs to be properly conducted and speedily concluded.
7. Mayors, councillors and even sometimes general managers, need to be discouraged from ringing an employee while a complainant is in their office and grandstanding for the complainant by bollocking the employee about the matter the subject of the complaint.

We would welcome the opportunity of discussing these suggestions in the course of the Review.

Yours etc



Ian Robertson
Secretary