



Northern Ireland
Assembly

Committee for the Environment

OFFICIAL REPORT (Hansard)

Local Government Bill: Draft Code of
Conduct for Councillors (DOE Briefing)

16 January 2014

NORTHERN IRELAND ASSEMBLY

Committee for the Environment

Local Government Bill — Draft Code of Conduct for Councillors: DOE Briefing

16 January 2014

Members present for all or part of the proceedings:

Ms Anna Lo (Chairperson)
Mr Cathal Boylan
Mr Colum Eastwood
Mr Tom Elliott
Mr Alban Maginness
Mr Ian McCrea
Mr Barry McElduff
Mr Ian Milne
Lord Morrow
Mr Peter Weir

Witnesses:

Ms Julie Broadway	Department of the Environment
Ms Mylene Ferguson	Department of the Environment
Ms Linda MacHugh	Department of the Environment
Ms Fiona McGrady	Department of the Environment

The Chairperson: I welcome the usual team: Linda, Julie, Fiona and Mylene. We are all very interested to hear about the code of conduct that you are working on. Over to you, Linda.

Ms Linda MacHugh (Department of the Environment): Thank you very much for the opportunity to come today. We felt that, before the Minister goes out to full public consultation, it would be very useful to send this to some key stakeholders and to get initial views. The Minister will be able to take those views on board before the full consultation process kicks off in early February.

I am joined by some of my legislation team and Fiona from the planning division. There is an element of the code that relates specifically to planning, so we felt that it would be useful to have her here. We have worked very closely with our colleagues in planning and the Commissioner for Complaints in drafting the code.

As you have heard me say before, this is another area that has been a long time in the process. The whole principle of the need for a code of conduct was very carefully debated when we had policy development panel A. At that stage, research was done on the principles and codes in other jurisdictions, and those models were amended to make sure that they were relevant for Northern Ireland. More recently, we have worked with the legislation working group, which includes representatives from local government, including the Northern Ireland Local Government Association (NILGA). It has been very useful to get their views on how this could be operationalised. We have come to you today with a document that has had a lot of input from some of the people who will use it.

I will not go through the whole document in detail, but, clearly, it is based on the seven Nolan principles of public life and also the five Assembly principles in order to align it as closely as possible to the regime in the Assembly. It is also very closely linked to wider governance issues. You have heard from the Commissioner for Complaints about how the complaints procedure works, and, really, this code sets the rule book against which the commissioner will determine whether there has been a breach. So, it is an important document. It also links to a number of other key documents that will be produced or that are in the process of being produced. One of those is the guidance from the Commissioner for Complaints on the interpretation of the code of conduct and how that will interlink with complaints and the complaints procedure. There is also further planning procedural guidance, which will be relevant to the ethical issues around planning that are enshrined in the code.

The local government reform joint forum, which is a consultative body comprising the management side in local government and central government and the trade unions, is working on a staff code of conduct. There is a very important correlation between the two codes. Jointly, we will bring together a group of elected members and people from the joint forum to look at a protocol that will act as a bridge between those two codes. One important element is the behaviour of councillors towards staff and staff towards councillors. We need to get that link-up right.

The code will have a statutory basis, and the draft code will need to be laid in the Assembly and endorsed by the Assembly through draft affirmative action. So, it will be fully debated.

The other issue that has been discussed this morning is who the code will apply to. I think that the initial proposal was that it would apply just to new councillors. However, that might create operational issues. During the transition period between May 2014 and April 2015, you could have two sets of councillors, one to which the code applies and one to which it does not. Indeed, you could have one councillor, sitting on the old and new councils, who would have to decide which hat they were wearing and whether the code applied or not. Just last week, we got agreement from the Minister that the code would apply to existing councillors, as well as new councillors, once it comes into operation. Operationally, I think, that is the only way forward.

The Chairperson: Will it be operational from May 2014, after the elections?

Ms MacHugh: It will apply to all councillors as soon as it is introduced. However, it will not apply beyond those who are councillors, as we do not have the jurisdiction in this Bill to apply legislation outside local government.

The final point — I think that it was discussed with the Commissioner for Complaints — is the need for training and capacity-building for councillors and local government officers on the procedures and the meaning of the code and how complaints will be delivered. We clearly identified the need for that, and it is already part of the overarching capacity-building framework that we have developed, again in partnership with local government. I am very pleased that the Commissioner for Complaints and his colleagues have offered to take a very proactive role in that. I very much welcome their support and being very —

The Chairperson: What do you think of his suggestion of a contract —

Ms MacHugh: Yes.

The Chairperson: — and that councillors will sign on the dotted line to say that they will abide by it?

Ms MacHugh: It is in everybody's interest that we all know the ground rules from the outset.

I am not going to say any more at this point, but we are very happy to take any questions that you have on the code.

The Chairperson: What about the timescale for the consultation, Linda? This is just for stakeholders, is it not?

Ms MacHugh: This is just a very short, sharp, two- to three-week process. We plan to go out to full public consultation in early February. We are looking at a possible eight-week consultation. However, considering the fact that we have done quite a lot of work with key stakeholders already, I am hopeful

that that will not be an issue. It would then need to go further and be developed into something that can be introduced in time for the end of May.

The Chairperson: Sometimes, there are weasel words. You need further explanation as well. You use words such as "respect" and "good relations". You really need to pin it down.

Mr Boylan: Thank you very much for your presentation. You are very welcome.

We need to look at how we facilitate those in outside bodies. They are doing the same job as councillors, even though they may come from the community and voluntary sector. Issues have been raised about that. I can see that for people who are in the public sector. There should be a code of conduct across the public sector. I can see them going through a process. I know that you indicated that it will apply only to local authorities, but there should be a code of conduct across the public sector. Is there any scope to include the community and voluntary sector in the code? Has there been any talk from the Minister's office about that?

Ms Julie Broadway (Department of the Environment): We understand the concerns. If councillors are acting on other bodies, the code will apply to them but may not apply to others. I really think that it is outside the scope of this Bill for us to deal with that. We can deal only with councils and councillors. I think that it would be for those other bodies to come up with a code, or, as the commissioner mentioned, more widely, there could be a code that applied to people in public appointments.

Mr Boylan: It would be very easy for that body or an individual to bring a complaint. If they make a decision as a corporate body, it would be very easy for somebody sitting on that committee, or whatever the case may be, to bring a complaint, if the council was the sponsoring body. It is very difficult to square that circle, and you can see the genuine concerns that there would be about that. The general public knows that this will come in and there is an expectation of what will be handed down. We need to be very careful about that. That is why I tried to nail down the issue of admissibility criteria, because that would protect, in some ways, complaints against councillors.

Ms MacHugh: Clearly, there also has to be a demarcation line between the decision of a body, or a corporate decision, and the behaviours of an individual. This is less about decision-making and more about a set of behaviours and an approach. This applies to the action of the individual as opposed to the collective.

Mr Boylan: We are just trying to get examples, because the actual decision could lead to the complaint. It is about the interpretation.

Ms MacHugh: We are aware that other bodies have their own code of conduct. Clearly, if a councillor is sitting on that body, that code will apply to the councillor.

The Chairperson: Would they be subject to two sets of code of conduct?

Ms Broadway: The code of conduct, as drafted, states that if they are on another body, and that body has a code of conduct, that code would have precedence. Of course, with regard to general behaviours, if they are acting as a councillor or representing a council on that body, they would have to take account of the code, but that other body's code would take precedence, if it has a code.

Mr Boylan: I understand. You can understand why we keep asking the question. It is about the complaint that might be made in relation to councils. It is not about the code of conduct and hoping that they conduct themselves in a proper manner. It is outside of that. We are trying to envisage what could go wrong and who would be accountable.

Ms Broadway: It is at a very early stage, but I know that the OFMDFM Committee is taking forward a Northern Ireland Public Services Ombudsman Bill. This might be something that would be appropriate for that Bill.

The Chairperson: Yes. It is outside the scope of the Local Government Bill. The difficulty with the code of conduct for other members, from outside, who sit on the community planning panel, for instance, is that the Commissioner for Complaints cannot investigate them. The commissioner cannot investigate people who are not councillors.

Ms Mylene Ferguson (Department of the Environment): It will extend, though. There is provision in this regime for people who are appointed to a committee, but who are not an elected representative, to be covered by the code. We are trying to contain it within the local government community, so that anybody who has a part to play in a committee, but is not elected, will have to abide by the code. They will have to sign up to it as well.

The Chairperson: But that is just committees; it is not general panels or —

Ms MacHugh: However, the way in which a community partnership operates would be determined by the council. So, the council would be in a position to set a code of conduct for everybody sitting on that partnership or body.

The Chairperson: But people still cannot take a complaint to the commissioner and complain against those members who are not councillors.

Ms MacHugh: Certainly not under this code and wider complaints regime that we are putting into place in the Bill.

Mr Elliott: Thank you for that. I have two queries. One is around when the code must be observed. Section 2(d) of the draft code states that the code must be observed:

"at all times and in any capacity".

Clearly, that is very wide-ranging. How would that work for a councillor who was sitting on his church organisation or on a community group, and he believed that he was there in a private capacity, but others said, "You're a councillor; you can't get away from that fact"? How would it operate in those circumstances?

Ms Ferguson: It would not apply if a councillor was appointed as a school governor, but, if it was more of a public appointment, such as to an education board, it would apply. So, there is a distinction.

Mr Elliott: I think that that needs more clarity, because it says:

"at all times and in any capacity".

That is extremely wide-ranging.

Ms Ferguson: It also goes into the area of people perceiving that somebody is acting as a councillor but that may not be in the council environment. We are trying to cover that.

Mr Elliott: It certainly does not say that in that part.

Mr Eastwood: Your local community might ask you to sit on something, but you could be appointed to lots of bodies and boards as a councillor by the council. Is that the distinction?

Ms Ferguson: Yes.

Mr Elliott: That is fair enough, Colum, and I accept your point. My only query is about the way it is written in that it says:

"at all times and in any capacity".

That is extremely wide-ranging. Other sections explain further details, but in this section, section 2, it is clearly very wide-ranging.

Ms Broadway: We can look at that issue before we go out to a full consultation. The benefit of having the pre-consultation is that hopefully we can deal with any major issues before we go out to the public.

The Chairperson: We can clarify the limitations and the boundary. It is scary to say "at all times" as if it includes walking the dog. *[Laughter.]*

Mr Elliott: My second point is on planning. Councillors believe that they will have very limited powers under the new planning mechanisms and will see this as a further restriction to planning. On page 22, under "Decisions contrary to officer recommendation", it states:

"You must never seek to pressure planning officers to provide a particular recommendation on any planning decision. If you propose, second or support a decision contrary to an officer's recommendation you will need to clearly identify and understand the planning reasons for doing so."

Most councillors can make a case — it is, quite often, not upheld — as to why they would go against a planning officer's decision. That is what happens at the moment. However, I feel that there will be a perception that that limits the scope. What is your view on that?

Ms Fiona McGrady (Department of the Environment): I recognise the comment, but the key words are "pressure planning officers". It is within the remit of a councillor to represent and lobby for his or her constituents, but that reference means to pressure the planning officer towards a particular recommendation. That is the important point. The whole purpose of the planning element of the code is to provide clarity on the roles and responsibilities of councillors on planning and to ensure that we provide protection for councillors in that area. The point about pressuring planning officers is to not pressurise them into a situation, but, yes, you can make representation where that is appropriate.

Mr Elliott: There will be huge arguments over what is pressure and what is reasonable representation.

Mr Weir: I understand what is being said, and I understand the intention. There may need to be a wee bit of manoeuvring with the wording. You want to avoid a situation of undue pressure. There may be an issue with interpretation. I appreciate that there is also a distinction depending on what way planning will operate. For instance, all the council may be in the planning bit, and you might have a councillor who legitimately may, if they are not on the planning committee, lobby on particular issues. At the moment, when you talk about pressure, what if someone who, for example — I do not think that it is intended — is not on the planning committee, then contacts the officer to say, "That set of apartments is proposed to go in there, and there is a lot of concern in the local community that it will have a major effect on parking etc"? It can be a slightly grey area between the legitimate indication of making views known and what counts as pressure. That may need to be teased out a wee bit more.

Ms McGrady: I think that you are right, and that is where we are developing guidance. This insert into the planning code is very high level, and we are proposing to develop guidance that will deal with the specific actions.

Mr Weir: What I am going to ask may well be contained in the code. However, with regard to the draft code and what you have said about this applying in the shadow period and applying to new councillors, I presume that there is some caveat in it, because the bulk of the planning stuff is stuff when it is devolved. You should not put undue pressure on an officer anyway, but a lot of this stuff should not be related to the pre-transfer of planning. If you intend to bring in the code at that point, I presume that there will be some differentiation so that that part of the planning code will only become effective once planning is devolved.

Ms Broadway: That is something that we can look at. The provision to apply the code to current and new councillors will be through the transitional provisions regulations that make provision for the shadow arrangements. We are finalising those at the moment, but we can look at that provision again.

Mr Weir: The problem is that there are other references to planning, and you need something that is quite explicit, because, in the broad sense, leaving aside the caveats that Tom and I have highlighted, a few things on the broader planning stuff may need a bit of tweaking, but there is a lot of stuff in there that would not be appropriate at present but would be appropriate on the planning side once planning was devolved. On those aspects, it would be massively too restrictive if this were pre the transfer of planning. However, a lot of the wider stuff about the code of conduct is fair enough.

Ms Broadway: We can look at that, and we can look at reorganising the code so that all references to planning are in the planning section.

Mr Weir: Yes, so that it says, for example, that section 8 shall not apply until the Department makes an order, or whatever.

Mr Boylan: The key element to that is the capacity-building. I know that you have the code and everything else, but there is an expectation out there. Councillors are going to be making decisions, and they need to understand. This is the back end of it as regards putting pressure on the likes of —

Ms McGrady: We recognise that, and a significant amount of capacity-building will be carried out, particularly for councillors who are sitting on planning committees. We will develop that, and, once we finalise the guidance, we intend to carry out a significant amount of capacity-building.

The Chairperson: There seems to be some inconsistency between councils. There was a recent case of a planning application opinioned by the planner to Belfast City Council for approval, and one councillor asked for a deferral, which led to the decision being reversed. I heard that other councils were asking how Belfast City Council could allow a single councillor to delay the process —

Mr Weir: I am not sure that what was reported is necessarily what happened. If a deferral is asked for, the application for deferral is brought at a planning committee meeting. The planning committee has to then agree with the deferral, and then the officer can agree for the decision to be deferred or whatever. That is the formal process. People can raise a particular objection, and Planning Service may react and say that it is looking at that objection and may pull it off the schedule. However, with regard to a deferral, there is nowhere — in Belfast or wherever — where there is the capacity for one person to say that he or she objects to something and consequently it is deferred. The planning committee would have had to agree to it. It is possible that, because one councillor raised the issue, the fact was reported that one councillor got it deferred, and that was not accurate. Sometimes, the press reports of these things do not necessarily reflect reality.

The Chairperson: Some councillors wanted to know how that was the practice in Belfast City Council, and how one councillor could ask for the decision to be looked at again. I suppose that Peter answered my point.

Ms McGrady: I will take up that point. We intend to develop a regional protocol to ensure consistency of approach across all council areas in planning and the workings of planning committees. Obviously, we will discuss that with key stakeholders and take all comments on board. It is of paramount importance to the Minister to ensure that there is consistency of approach on planning when it transfers to council.

The Chairperson: There have always been complaints about inconsistencies between planning offices, let alone in future when planning goes to councils. Are there any more questions for the team?

Mr I McCrea: I raised with Dr Frawley the issue of having compulsory training on standards, to use his wording. I believe that such training should be compulsory, not for the sake of it but to protect councillors in the new bodies, whether on the planning function or on any other aspect of their role. Have you given much consideration to including it as being compulsory? What is your current position?

Ms MacHugh: Yes, that has been raised with us before. We are looking at ways, either through legislation or operationally through council procedure, of requiring councillors to sign a declaration to become a councillor that they know and understand the code of conduct and have adopted it. We are trying to weigh up whether we should legislate for that or put it into operational procedures. We will have to put that to the Minister. As the law stands currently, there is not a statutory obligation for training for the code of conduct. The code of conduct is a statutory code. We are considering that.

The Chairperson: You are considering strengthening it.

Mr Weir: On the training issue, I think that there may be a gap between the ways that people will interpret things at present. There are specific provisions on, for instance, the planning side, and there are implications with some of that because some of those directly apply to quasi-judicial functions, where it is a licensing issue. Obviously, there are certain areas where licences are issued by councils already, such as entertainment licences and pub licences. I think that most people will understand

fairly easily broader declarations of interest and all those types of things. That is fairly straightforward. With a bit of training, they can understand the planning stuff, which will not come in immediately.

To take an example of the quasi-judicial functions, if, as part of entertainment licences for pubs, you are saying that there will now be certain levels of restrictions on what can be said and what indications of support can be given, it will be fairly commonplace, certainly in my locality, that you will have a number of pubs and clubs that, historically, have been built in the centre of residential areas or very close to residential areas, and councillors will get lobbied, quite vigorously on occasions, on particular aspects of that. I think that, although people probably can see that something very different is happening with planning and will keep that in mind, unless there is very clear-cut training, councillors could very easily make a major mistake by way of local residents complaining that they do not want a general extension into the early hours of a Saturday morning, or whatever it happens to be, because they think that that is in a different category from planning. So, as you move ahead on that, you will maybe want to make sure that that is got right. I think that that is a key area on which there needs to be very clear-cut early training. From what I read of that, although it will be a bit less restricted than the pure planning stuff, it will be something that will kick in from day one as opposed to on the devolution day.

The Chairperson: Thank you very much. I am sure that we will see you soon.