

The new Model Code of Conduct paragraph 12 (2)

The wider agenda of public involvement

Governance Officers should consider the implications of Para 12 (2) in a wider context.

The opportunity should be taken of both clarifying and improving the circumstances and arrangements for the public to contribute to meetings.

The wider agenda includes;

- Improving public involvement and contribution to local governance
- Improving access of the public to decision makers in local government
- Incorporating the contribution of the public as part of the relevant considerations in making decisions
- Enabling ward councillors to pursue a representative role
- Enabling councillors to take the maximum advantage of the relaxation provided in 12 (2).

Local authorities, historically, have been reluctant to allow the public to speak at their meetings. Practice varies widely, but arrangements are now common in standing orders for the public to present petitions to council meetings, give evidence to scrutiny committees and make representations to planning and regulatory committees. A chairman has a broad discretion to allow persons other than committee members to speak in the interests of managing the conduct and business of the meeting, and this discretion may be useful in most committees.

A more positive approach towards involvement of the public in local authority meetings may now be timely.

Limits to 12 (2)

Paragraph 12 (2) limits a councillor's involvement to 'making representations, answering questions or giving evidence relating to the business'. The involvement of the public is not so limited, but it may be practical for authorities to adopt similar wording on the basis that it is sufficiently wide to meet any likely circumstance of public involvement. Presenting petitions or making presentations, for example, are likely to fall within the meaning of 'making representations'. Local Authorities are likely to have separate arrangements for 'public questions' and member questions. The limitation prevents, of course, participating in debate. The councillor must withdraw from the room immediately after making representations etc. (para 12 (1) (a) (i)). A councillor must not seek improperly to influence a decision. (para 12 (1) (c)) Arm bending, intimidation, manipulation, bullying and other methods are now hopefully vanquished to history.

Suppose the Leader (or the planning committee chairman) wanted to take advantage of the relaxation? The diplomatic advice might be that such a person will need to avoid giving any appearance of using their position (other than as a normal councillor) to influence.

Procedure

Monitoring Officers will need to ensure that it is abundantly clear, when a councillor takes advantage of 12 (2) that the public has the same facility. It is essential therefore that a clear decision is made prior to the meeting or at the meeting that the public (and, therefore, councillors having a prejudicial interest) are allowed to make representations, answer questions or give evidence with reference to specific items of business. In considering the decision, it would be appropriate whether to limit the public involvement to making representations and/or answering questions and/or giving evidence. It would seem practical that for regulatory business the public be allowed only to make representations. For scrutiny business, answering questions and giving evidence would be appropriate. For area committees, all three options may be appropriate. The risk of including all three options as a standard format is that it could result in dissent if a chair does not, for example, allow the public to answer a question raised at the meeting. (It is not entirely clear in 12 (2) that questions need be put specifically to the public.) Practical experience will improve judgement on the extent of what the public is allowed to do. Applying discretion to the circumstances is more flexible than prescribing finite rules.

It would seem expedient not to limit a chairman's discretion to allow the public to make representations etc. The course of a meeting cannot always be anticipated and it may be in the interests of the management of the business of a meeting for a decision to allow the public to be involved to be made at any time during the course of a meeting.

Prior to the commencement of a planning committee, for example, it is not unusual for public interest to be apparent in any item, and for the public to request to contribute. Where the practice is for the public to be permitted to make representations, it is often possible for the committee officer to clarify who wants to speak about an application. It should in these circumstances be possible for it to be announced at the beginning of the meeting which agenda items the public are allowed to make representations on, or give evidence on etc.

It may well be possible for an agenda to make clear which items the public will be allowed to contribute to. This could become the norm for regulatory, scrutiny and area committee business, for example.

The public do not have to *actually* participate in order for a councillor to take advantage of paragraph 12 (2). It is the fact that the public are *allowed* to make representations, etc that enables the councillor to do likewise. It is therefore possible for a councillor having a prejudicial interest in an item to take advantage of paragraph 12 (2) and make representations, etc even though no other member of the public participates. There may be circumstances where the public is not interested in a matter, but a councillor is. (E.g. a planning application relating to property next door to the councillor) If it is normal practice for a committee to permit a member of the public to speak in these circumstances, it would seem to be appropriate for the councillor to have the same benefit. It would seem unfair to debar a councillor in these circumstances, merely because the councillor is the only person wishing to take advantage of the opportunity given to the public to speak.

The absence of any public at the meeting should not of itself be particularly relevant to the decision allowing the public to participate. The issue is whether it is *appropriate* for the public to be allowed to participate in relation to the business. It may well be that an executive will have few items of business. A planning committee might allow public involvement in relation to business involving consideration of planning applications, but perhaps not enforcement matters.

Formalities

Just as it is important for a decision to be seen to be made to allow public involvement, it is equally critical that the minutes record the fact. For simplicity this might be reduced to a footnote. Where a councillor takes advantage of the paragraph 12 (2) relaxation, this must, of course, be recorded in the minutes. (e.g. 'Cllr X disclosed a personal and prejudicial interest in this matter by reason of --- but made representations to the committee under paragraph 12 (2) of the Code of Conduct') The minutes are likely to be essential evidence in the event of any complaint of breach.

Conclusion

Paragraph 12 (2) should be seen as an opportunity to enhance public involvement in local authority decision making, as well as providing councillors having prejudicial interests the entitlement to make representations, answer questions and give evidence in the same way that the public might be allowed to. Monitoring Officers might wish to be seen as facilitators of such development.

Tony Kilner
Policy and Development Officer
ACSeS
Sept 07