

City of Durham

At a Meeting of the **STANDARDS COMMITTEE** held in the Town Hall, Durham, on Thursday 16th October, 2008, at 5.30 p.m.

Present: Mrs T Naples (in the Chair)
and Councillors Holland, Lodge and Turnbull (City Council Members)
and Councillor Mrs P Hudson (Parish Council Member)

233. APOLOGIES FOR ABSENCE

Apologies for absence were received from Mr Ingleby, Mr Hollingworth, Councillor Anderson and Councillor Simpson.

234. MINUTES

The Minutes of the Meeting held on 18th September, 2008, were confirmed as a correct record and signed by the Chairman.

235. DECLARATION OF INTERESTS

There were no declarations of interest.

Report of Monitoring Officer

236. REQUEST FOR DISPENSATION

West Rainton & Leamside Parish Council had confirmed that they no longer required a dispensation as the evening event, proceeds of which were to be used for the repair of the village hall, had been organised by the Community Association rather than the parish council.

Resolved: That the report be noted

237. COMPLAINTS TO THE STANDARDS BOARD FOR ENGLAND

SBE21948- SBE 21953.08

The investigating officer had concluded his report however the draft report was with the parties to the investigation for comments. Once the report was finalised it would be circulated to the committee.

238. COMPLAINTS TO THE STANDARDS COMMITTEE

(a) SC0001.08

The complainant, Mr Malcolm Stabler, alleged that Councillor Richardson of West Rainton & Leamside Parish Council:-

1. Refused to address matters raised by the complainant in correspondence
2. Did not respond to correspondence
3. Attacked the integrity of the complainant
4. Had used his position to confer a disadvantage on the complainant
5. Had compromised the impartiality of the Clerk
6. Had associated himself with inaccurate and misleading statements and therefore brought his office into disrepute.
7. Participated in a meeting at which he had a prejudicial interest.

The Local Assessment Sub-Committee of the Standards Committee considered the matters alleged above at a meeting on 4 July 2008 and decided that the member had not breached the Code of Conduct in respect of the allegation that the member:-

1. Failed to treat the complainant with respect
2. Did anything which compromised the impartiality of anyone working for the authority
3. Used his position to improperly confer a disadvantage on the complainant

The sub-committee did find that the member had failed to respond to the complainant's letter of the 19 December 2007 which could bring the authority into disrepute, however it was of the opinion that this potential breach of the code was insufficient to warrant further action being taken. The allegation that the member had failed to declare a prejudicial interest was considered separately as complaint SC0002.08.

The complainant requested a review of the decision to take no further action and this review took place on the 11 September 2008. The sub-committee who carried out the review upheld the original decision in full.

Resolved: That the report be noted

**Ongoing complaints to the Standards Committee
Agenda items (b), (c), (d), (e), (f), (g)**

The Monitoring Officer updated the Committee in respect of all ongoing complaints to the Standards Committee and confirmed that full details of each complaint would be reported as appropriate once they had concluded.

Resolved: That the report be noted

239. INVITATION TO JOIN AIMScE

It was confirmed that, as the Vice Chair of the Committee is already a member of AIMScE, no further membership should be taken out at this stage.

Resolved: That the report be noted.

240. CORRESPONDENCE

There was no correspondence for the Committee to consider.

241. ANY OTHER BUSINESS

Attendance by the Monitoring Officer and Vice Chair of the Committee at the 7th Annual Assembly of Standards Committees

The Vice Chair confirmed that she had attended the above conference with the Monitoring Officer and that a report upon the conference would be provided to the committee at its next meeting. In the meantime however, a leaflet regarding guidance for planning councillors had been received at the conference, which could appropriately be circulated to members of the planning committee.

Resolved: That copies of the leaflet “Positive Engagement – A Guide for Planning Councillors (Updated Version)” should be distributed to all members of the council.

The meeting terminated at 6.25 p.m.

Chair

CITY OF DURHAM

STANDARDS COMMITTEE

16 October 2008

REPORT OF MONITORING OFFICER

1. Complaints to Standards Board for England

(a) SBE21948 – SBE21953.08

The Deputy Monitoring Officer has concluded his investigation into this matter however the draft report has not yet been agreed by all parties concerned. Accordingly, the report will be circulated to Members once it has been finalised.

Recommended: That the report be noted

2. Complaints to Standards Committee

(a) SC0002.08

The Deputy Monitoring Officer, Mr Richard Langdon, has concluded his investigation and is in the process of completing his report, which will be circulated to Members under separate cover for them to consider.

(c) SC0003.08

Following the Local Assessment Sub-Committee meeting on the 11 September 2008, Tessa Crowe, a locum solicitor employed by the Council, will be investigating this matter and will report in due course.

The Complainant has requested a review of the elements of the complaint which was not referred for investigation and a review hearing has been arranged.

(d) SC0004.08

Following the Local Assessment Sub-Committee meeting on the 11 September 2008, Tessa Crowe, a locum solicitor employed by the Council, will be investigating this matter and will report in due course.

The Complainant has requested a review of the elements of the complaint which was not referred for investigation and a review hearing has been arranged.

(e) SC0005.08 – SC0012.08

The Deputy Monitoring Officer, Mr Richard Langdon, has concluded his investigation and is in the process of completing his report, which will be circulated to Members under separate cover for them to consider.

One element of the complaint was not however referred for investigation but the Complainant has not requested a review of this element of the complaint.

(f) SC0014.08

A complaint has been received in respect of a parish councillor. An assessment hearing has been listed for the purposes of carrying out the local assessment procedures.

(g) SC0015.08 – SC0018.08

A complaint has been received in respect of a parish councillor. An assessment hearing has been listed for the purposes of carrying out the local assessment procedures.

(h) SC0019.08 – SC0026.08

Complaints have been received from numerous sources in respect of two parish councillors. An assessment hearing has been listed for the purposes of carrying out the local assessment procedure.

(i) SC0027.08 – SC0030.08

Complaints have been received in relation to a number of parish councillors. An assessment hearing has been listed for the purposes of carrying out the local assessment procedure.

(j) SC0031.08 – SC0039.08

Complaints have been received in relation to a number of parish councillors. An assessment hearing has been listed for the purposes of carrying out the local assessment procedure.

(k) SC0040.08 – SC0046.08

Complaints have been received in relation to a number of parish councillors. An assessment hearing will be listed for the purposes of carrying out the local assessment procedure.

(l) SC0047.08

A complaint has been received against a parish councillor. An assessment hearing has been listed for the purposes of carrying out the local assessment procedure.

(m) SC0048.08

A complaint has been received against a parish councillor. An assessment hearing has been listed for the purposes of carrying out the local assessment procedure.

(n) SC0049.08 – SC0050.08

Complaints have been received in relation to a number of parish councillors. An assessment hearing will be listed for the purposes of carrying out the local assessment procedure.

3. Consultation on Code of Conduct for local authority members and employees

Attached is a copy of the consultation document issued by the Department for Communities and Local Government for members consideration. Also attached is a suggested response to the consultation in respect of members and employees for members consideration.

4. Guidance on references to the Adjudication Panel by a Standards Committee.

Please find attached for information a copy of the guidance issued by the Adjudication Panel for England.

5. Feedback from the Seventh Annual Assembly of Standards Committees

The Vice-Chair and Monitoring Officer attended the above event on 13th and 14th October 2008. A number of different and useful workshop sessions were attended throughout the conference, at which it was possible to compare how things are done by the Committee with the stance adopted by other Committees. It was noted however that despite the fact that we are using the same regulations, many different interpretations have begun to develop across the Country. Details of all of the materials relating to the sessions are available via the events website, www.annualassembly.co.uk.

The speeches which were given were of limited interest to this Committee, but again are available through the event website should members wish to access them directly.

6. Case Review Digest 2008

Please find attached for information a copy of the Case Review: 2008 Digest, which has been issued by the Standards Board for England.

To Chief Executives of:
County Councils and District Councils in England
London Borough Councils
The Greater London Authority
National Park Authorities
The Broads Authority

1 October 2008

The Clerk of:
City of London
Council of the Isle of Scilly
Combined Fire and Rescue Authorities
Fire and Civil Defence Authorities
Police Authorities in England and Wales

The Clerk of:
Parish and Town Councils in England

Dear Colleague,

Communities in control: Real people, real power: Codes of conduct for local authority members and employees – A consultation

I am writing to draw your attention to the above consultation paper which was published on the Communities and Local Government website on 1 October. I also enclose a paper copy of the consultation for your consideration.

You will see that this is the next in a series of Communities in Control consultation documents following the publication of the Local Government Empowerment White Paper, *Communities in Control: Real people, real power*, on 9 July, and building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.

This paper invites views on proposals for revising the Local Authorities (Model Code of Conduct) Order 2007 and the Relevant Authorities (General Principles) Order 2001. It also seeks views on the proposed introduction of a model code of conduct for local government employees. Particular questions on which we would welcome comments are summarised at Annex A to the paper.

Copies of the consultation paper are being sent to all principal local authorities, parish councils and other organisations and individuals who have a particular interest in these issues. If you wish to comment, please send responses either by post to:

Karl Holden
Conduct and Council Constitutions Team
Communities and Local Government
Zone 5/B2, Eland House
Bressenden Place
London
SW1E 5DU

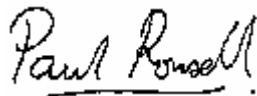
Or by e-mail to: conductcode@communities.gsi.gov.uk

By **Wednesday 24 December 2008**.

Any queries you may have about this letter or the enclosed paper should be directed to Karl Holden (tel: 0207 944 5962; conductcode@communities.gsi.gov.uk).

You will also be interested to know that, as announced in the *Communities in control: Real people, real power: Improving local accountability* consultation paper, we will be consulting at the end of October on proposals to revise the code of recommended practice on local authority publicity. A paper copy of the consultation paper will be sent to you on publication.

Yours sincerely

A handwritten signature in black ink that reads "Paul Rowsell". The signature is written in a cursive style with a horizontal line underneath the name.

Paul Rowsell



Communities in control: Real people, real power
Codes of conduct for local authority members and
employees

A consultation



Communities in control: Real people, real power
Codes of conduct for local authority members and
employees
A consultation

October 2008

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Chapter 1: The consultation and how to respond

Communities in control consultation papers

- 1.1 The White Paper, *Communities in control: Real people, real power*, is about passing power into the hands of local communities. It sets out a range of policies to achieve this, building on work still in progress from the 2006 White Paper, *Strong and Prosperous Communities*.
- 1.2 This paper is the next in a series consulting on a number of policy commitments. Future consultation papers include a consultation on proposals to revise the code of recommended practice on local authority publicity, which is due to be published at the end of October. This paper invites views on proposals for revising the model code of conduct for local authority members ("the members' code"), principally to clarify its application to members' conduct in their non-official capacity. This paper also invites views on proposals for associated changes to the Relevant Authorities (General Principles) Order 2001 which sets out the general principles which govern the conduct of local authority members. Finally, it seeks comments on proposals to introduce a requirement for authorities to incorporate a code of conduct for employees, based on a statutory model code of conduct, in to the terms and conditions of employment of their employees' ("the employees' code").

About this consultation

- 1.3 The proposals in this consultation paper relate to relevant authorities in England and police authorities in Wales.
- 1.4 Following the local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 established a more locally-based conduct regime for local authority members centred on local authority standards committees. Under the new devolved regime, the Standards Board for England has become a light-touch strategic regulator, responsible for monitoring the operation of the conduct regime and giving support and guidance to standards committees and monitoring officers in discharging their new functions.
- 1.5 As part of the changes to the conduct regime, a new model code of conduct for local authority members, the Local Authorities (Model Code of Conduct) Order 2007, was introduced with effect from May

2007, on the basis that the provisions of the members' code would be reviewed in light of early experience of its practical operation.

- 1.6 Chapter 2 of this paper seeks views on proposals to clarify the members' code in its application to members' conduct when acting in a non-official capacity. It also seeks views on the operation of, and proposed revisions to, the members' code, including reconfiguring the members' code into two distinct sections, the first dealing with members' conduct in their official capacity, the second dealing with members' conduct in their non-official capacity. Finally, it seeks views on associated amendments to the Relevant Authorities (General Principles) Order 2001 to clarify its application to members' conduct in their non-official capacity.
- 1.7 Chapter 3 of this paper seeks views on the proposed introduction of a model code of conduct for local government employees, which will become part of such employees' terms and conditions of employment.
- 1.8 Particular questions on which we would welcome comments are set out in each chapter and summarised in **Annex A**. In order to aid your consideration of the proposed amendments to the current members' code, the substance of the 2007 code is reproduced at **Annex B**.
- 1.9 We are minded, subject to responses to this consultation, to implement the proposals in this consultation paper, so that they come into effect in line with the local government elections 2009.

Who are we consulting?

- 1.10 This is a public consultation and it is open to anyone to respond to this consultation document. We would, however, particularly welcome responses from local authority members, local authority monitoring officers, local government employees, national representative bodies, local government partners and trade unions. **The consultation period runs for 12 weeks to 24 December 2008.**

How to respond

- 1.11 Your response must be received by 24 December 2008 and may be sent by e-mail or post to:

Karl Holden
Conduct and Council Constitutions Team
Communities and Local Government
Zone 5/B2, Eland House
Bressenden Place
London
SW1E 5DU

e-mail: conductcode@communities.gsi.gov.uk

If you are replying by e-mail please title your response 'Response to Model Code consultation'.

It would be helpful if you could make clear in your response whether you represent an organisation or group, and in what capacity you are responding.

What will happen to the responses?

- 1.12 The Department will take account of the responses received to this consultation before taking decisions on the legislation that will form the revised members' code, the general principles order and the new employees' code.
- 1.13 Within three months of the close of the consultation period we will analyse the responses to the consultation and produce a summary of them. This summary will be published on the Department's website at www.communities.gov.uk

Publication of responses – confidentiality and data protection

- 1.14 Information provided in response to this consultation, including personal information, may be published, or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004.
- 1.15 If you want any of the information that you provide to be treated as confidential you should be aware that under the FOIA, there is a statutory Code of Practice with which public authorities must comply, and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.
- 1.16 If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 1.17 The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

The consultation criteria

- 1.18 The UK Government has adopted a code of practice on consultations. Please see **Annex C** of this document for the criteria that apply under this code, and advice about who you should contact if you have any comments or complaints about the consultation process.

Additional copies

- 1.19 You may make copies of this document without seeking permission. If required, printed copies of the consultation paper can be obtained from Communities and Local Government Publications, whose contact details may be found at the front of this document. An electronic version can be found at the Consultation Section of the Department's website at: www.communities.gov.uk.

In context – previous consultations and relevant legislation

- 1.20 The local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, set out the Government's proposals to put in place a clearer, simpler and more proportionate model code of conduct for members which would include changes to the rules on personal and prejudicial interests. This announcement followed a consultation by the Standards Board for England, *A Code for the future*, in February 2005 and the Discussion Paper *Conduct in English Local Government*, issued by the then Office for the Deputy Prime Minister in December 2005.
- 1.21 The policy proposals took form in the January 2007 consultation document, *Consultation on Amendments to the Model Code of Conduct for Local Authority Members*, which proposed the combination of the four different model codes of conduct that existed at the time (for local authorities, parish councils, national parks and police authorities) into a single consolidated model code.
- 1.22 The Local Authorities (Model Code of Conduct) Order 2007 came into force on 3 May 2007. With the members' code now in place for over a year, we believe this is an appropriate time to examine how well it has functioned in practice and consider any revisions that may be required. The proposed amendments to the members' code set out in this paper reflect discussions with the Standards Board and, in particular, their experience of the practical operation of the 2007 members' code over the last year.
- 1.23 Following the 2006 local government White Paper and the introduction of the 2007 members' code, the Local Government and Public Involvement in Health Act 2007 made provision clarifying the law in

relation to the application of the conduct regime to the conduct of members in their non- official capacity. This paper therefore also invites comments on proposals to revise the members' code and the general principles order to address the issue of the application of the conduct regime to the conduct of members in their non-official capacity.

Code of conduct for local government employees

- 1.24 In August 2004, the then Office of the Deputy Prime Minister issued the consultation paper, *A Model Code of Conduct for Local Government Employees*. The paper consulted on a draft code defining the minimum standards of conduct that employees of relevant authorities would be expected to observe on carrying out their duties. The 2004 consultation was followed by further inquiries and consultations on matters relating to the conduct regime for local government.
- 1.25 The Department restated its commitment to introduce a model employees' code, under Section 82 of the Local Government Act 2000, in the local government White Paper 2006. However, in light of the above inquiries and consultations, and the introduction of the 2007 members' code, it was decided that the implementation of an employees' code should be delayed until the Department had an opportunity to consider the employees' code in the context of the wider review of the conduct regime for local government and the lessons learned from the implementation of the new members' code.
- 1.26 With the implementation of the new devolved conduct regime and our proposals to amend the members' code, drawing on the experience of its first year of operation, we consider that the time is right to also consult on proposals to introduce a model employees' code.

Chapter 2: Code of conduct for local authority members

What is the code of conduct for?

- 2.1 The public has a right to expect high standards of conduct from their elected and co-opted members. The standards of conduct expected of local authority members are set out in the members' code, which is underpinned by the ten general principles. By signing up to the members' code, a member is actively taking on a formal obligation to abide by its requirements.
- 2.2 The members' code forms the bedrock of the conduct regime and aims to promote the public's trust and confidence in their members and faith in local democracy. It does this by providing a robust set of standards of behaviour for members to abide by and work within. In doing this, the code also protects members from unreasonable expectations of behaviour being put upon them. Since May 2008, allegations that a member has failed to comply with the provisions of the members' code are considered by local authority standards committees.
- 2.3 The current members' code is set out in the Local Authorities (Model Code of Conduct) Order 2007 which applies to members of relevant authorities in England and of police authorities in Wales. On its introduction, the Government gave an undertaking that the effectiveness of the code would be reviewed after it had been in operation for some time. We believe, drawing on the Standards Board's practical experience that the members' code is, broadly, operating very well. However, as it has been in force for over a year, we consider that it is now appropriate to review the code.
- 2.4 Most importantly, we propose that the members' code be restructured by revoking the existing Order and making a new one. We propose that the new members' code will be differently formatted to the existing code, making it easier to interpret and clearer in its application, for instance by dividing it into two sections: the first dealing with members' conduct when acting in an official capacity and reflecting what is in the current code, the second dealing with members' conduct in their non-official capacity.

Application of the code to members' conduct in their non-official capacity

- 2.5 Trust in our local authority members is one of the cornerstones of local democracy. Members should inspire trust and confidence from those who elected them, set an example of leadership for their communities and should be expected to act lawfully even when they are not acting in their role as members.
- 2.6 This view was supported by those who responded to the Standards Board for England's consultation on the members' code in 2005. Responses indicated a clear view that a member's conduct in a non-official capacity was an issue that they considered should be covered by the members' code, particularly where that conduct amounts to a criminal offence.
- 2.7 It has always been our intention for the members' code to apply to a limited extent to the conduct of members in a non-official capacity. We wish now to clarify which provisions of the members' code apply in a member's official capacity and to put beyond doubt which provisions apply to a member's conduct in a non-official capacity.
- 2.8 The need to clarify what conduct in a member's non-official capacity is covered by the members' code arose as a consequence of a court judgment in 2006. This cast doubt on the ability of the code to cover members' conduct not linked to the performance of their public duties. As was made clear by Ministers during the passage of the Local Government and Public Involvement in Health Act 2007, we consider that certain behaviour, even when there is no direct link to the member's official role, can have an adverse effect on the level of public trust in local authority members and local government as a whole.
- 2.9 We propose therefore that the new members' code should, in the section covering the conduct of members in their non-official capacity, contain the following provision prohibiting particular conduct where that conduct would constitute a criminal offence:

"Members must not bring their office or authority into disrepute by conduct which is a criminal offence".

Consultation Question 1:

Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

Definition of 'criminal offence' and 'official capacity'

- 2.10 The Local Government and Public Involvement in Health Act 2007 gave the Secretary of State the power to define, for the purposes of the members' code, what constitutes a 'criminal offence'. We propose for the purpose of the members' code, that 'criminal offence' be defined as any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.
- 2.11 Our intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the conduct regime. We consider that this approach will ensure that the most minor criminal offences, for example minor motoring offences, parking offences and dropping litter as well as cautions and orders falling short of a criminal conviction by a court, will not be included in the remit of the members' code. However, serious criminal offences which we consider should come under the remit of the members' code, such as assault, harassment, fraud and offences relating to child pornography will be included in the remit of the code.
- 2.12 We propose that the Standards Board for England will issue guidance for local authority standards committees on how a criminal offence should be treated in its application to the conduct regime.

Consultation Question 2:

Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

- 2.13 The Local Government and Public Involvement in Health Act 2007 also gave the Secretary of State power to define, for the purposes of the members' code, what constitutes 'official capacity'.
- 2.14 We propose that for the purposes of the members' code, 'official capacity' be defined as being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.

Consultation Question 3:

Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.

Offending abroad

2.15 We also propose that the members' code would engage with conduct committed in a foreign country, where that conduct constitutes a criminal offence in that country, but only where the conduct would also constitute a criminal offence if it was committed in the UK. However, the code would only apply if the individual was convicted in the country in which the offence was committed.

Consultation Question 4:

Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?

What does this mean?

2.16 Our proposals would have the effect of providing that the only conduct in a member's non-official capacity which is engaged by the code, is conduct which constitutes a criminal offence, as defined in paragraph 2.10 above. The code may only then be applied to that conduct when the evidence that the member's conduct constituted a criminal offence is provided by the criminal conviction of the member in the courts.

2.17 This would mean, for example, that a member who was convicted of a criminal offence of assault or harassment could be held to have breached the code, even if the conduct, which led to the conviction took place entirely outside the member's official capacity.

Criminal conviction of a member

2.18 It should be noted that a criminal conviction resulting in a custodial sentence of more than three months without the option of paying a fine is already covered by section 80 of the Local Government Act 1972, with the member automatically disqualified from office for five years. We are not proposing any changes to this legislation.

The conduct regime

2.19 At present, investigations into alleged breaches of the members' code are triggered by a written allegation made to the standards committee of the local authority concerned. We propose that this continue to be the case when dealing with allegations of misconduct in relation to a member's conduct in their non-official capacity.

2.20 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the standards committee or the

Standards Board, as the case may be, would cease their investigation process until the criminal process had been completed. Any subsequent action under the conduct regime in respect of a member's private conduct would follow the conclusion of the criminal procedure. The member would not be suspended during the period of the criminal process.

- 2.21 For the purpose of the conduct regime, the criminal process will be considered to have been completed at the conclusion of any appeals process.

Consultation Question 5:

Do you agree that an ethical investigation should not proceed until the criminal process has been completed?

Proposed revisions to the members' code

- 2.22 This consultation paper also seeks views on the following amendments which we propose to make to the provisions of the existing code. The proposed amendments reflect discussions with the Standards Board and, in particular, the Board's experience of the practical operation of the code over the last year.
- 2.23 In order to aid your consideration of our proposed amendments to the members' code, the substance of the present code is reproduced at **Annex B** to this paper. Guidance on the provisions of the members' code is available on the Standards Board for England's website at www.standardsboard.gov.uk

Parish councils

- 2.24 It has been suggested that article 2(5) of the Local Authorities (Model Code of Conduct) Order 2007 be amended to apply paragraph 12(2) to parish councils, to make it mandatory for parish councils that a member with a prejudicial interest may make representations at a meeting only if members of the public are able to attend that meeting for the same purpose. Currently, if a parish council wishes this provision to apply, it must make a conscious decision to adopt paragraph 12(2) into its code. This amendment would save unnecessary administration and ensure consistency across parish councils.

Membership of other bodies

- 2.25 It has been suggested that paragraphs 8(1)(a)(i) and (ii) of the current members' code be amended to clarify that the sections are referring to other bodies that you are a member of or which exercise functions of a public nature, putting it beyond doubt that this is not a reference to the authority itself.

Personal interests

2.26 It has been suggested that current wording of paragraph 8(1)(a) of the members' code could be amended to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25 in his or her register of members' interests.

Prejudicial interests

2.27 It has been suggested that paragraph 10(2) of the code be amended to remove the double negative in the current drafting, to make it clear that a prejudicial interest exists where the business of your authority affects your financial position or the financial position of a person listed in paragraph 8 of the code or it relates to the determining of any approval, consent, licence, permission or registration in relation to you or those persons listed in paragraph 8 of the code.

2.28 It has been suggested that the meaning of 'determining' in paragraph 10(2)(b) could be clarified to include variation, attaching, removing or amending conditions, waiving or revoking applications.

2.29 It has also been suggested that paragraph 10(2)(c) could be amended to clarify that a member would not have a prejudicial interest in the business of the authority where that business related to giving evidence before a local authority standards committee hearing regarding an allegation that a member of the authority had failed to comply with the code.

Registration of members' interests

2.30 We propose that any new members' code would take into account any existing registration of members' interests. This will ensure that members who have already registered their interests in line with the 2007 model code do not have to repeat the process when the revised members' code is introduced.

Consultation Question 6:

Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

Consultation Question 7:

Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

Consultation Question 8:

Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.

Legislative context

- 2.31 The current members' code is set out in the Schedule to the Local Authorities (Model Code of Conduct) Order 2007 made under powers conferred on the Secretary of State by section 50 of the Local Government Act 2000.
- 2.32 Section 183 of the Local Government and Public Involvement in Health Act 2007 inserted, into section 50 of the Local Government Act 2000, a requirement for the Secretary of State to specify which provisions of the members' code apply in relation to a member's conduct when acting in an official capacity and which provisions apply when not acting in an official capacity. A provision may only be specified to apply to members' conduct when not acting in an official capacity if the conduct it prohibits constitutes a criminal offence. The power in section 50 of the Local Government Act 2000 permits the Secretary of State to define for the purposes of the members' code what is meant by "criminal offence" and what is meant by "official capacity".
- 2.33 We propose that the existing Local Authorities (Model Code of Conduct) Order 2007 be revoked and a new, revised Order would be made to reflect our proposed amendments and that part of the code applies to a member's conduct in their official capacity and part of it would apply to a member's conduct in their non-official capacity.
- 2.34 Provision is also made in section 183 of the Local Government and Public Involvement in Health Act 2007 for members to give to their authority an undertaking to observe the new code within a period prescribed by the Secretary of State. We propose that members will have two months from the date their authority adopts the new code to give a written undertaking that they will observe their authority's code. Failure to do so will mean that they cease to be members of the authority.

Consultation Question 9:

Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?

Proposed amendments to the General Principles

What are the General Principles?

- 2.35 The ten General Principles, contained in the Relevant Authorities (General Principles) Order 2001, are based on the seven principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the members' code, which must be consistent with these principles.
- 2.36 The ten general principles are reproduced below. The principles govern the conduct of members, and a failure to act in accordance with them may lead to a failure to comply with the members' code.

The General Principles

Selflessness

1. Members should serve only the public interest and should never improperly confer an advantage or disadvantage on any person.

Honesty and Integrity

2. Members should not place themselves in a situations where their honesty and integrity may be questioned, should not behave improperly and should on all occasions avoid the appearance of such behaviour.

Objectivity

3. Members should make decisions on merit, including when making appointments, awarding contracts, or recommending individuals for rewards or benefits.

Accountability

4. Members should be accountable to the public for their actions and the manner in which they carry out their responsibilities and should co-operate fully and honestly with any scrutiny appropriate to their particular office.

Openness

5. Members should be as open as possible about their actions and those of their authority and should be prepared to give reasons for those actions.

Personal Judgement

6. Members may take account of the views of others, including their political groups, but should reach their own conclusions on the issues before them and act in accordance with those conclusions.

Respect for Others

7. Members should promote equality by not discriminating unlawfully against any person, and by treating people with respect, regardless of their race, age, religion, gender, sexual orientation or disability. They should respect the impartiality and integrity of the authority's statutory officers, and its other employees.

Duty to uphold the law

8. Members should uphold the law and, on all occasions, act in accordance with the trust that the public is entitled to place in them.

Stewardship

9. Members should do whatever they are able to do to ensure that their authorities use their resources prudently and in accordance with the law.

Leadership

10. Members should promote and support these principles by leadership, and by example, and should act in a way that secures or preserves public confidence.

Proposed revisions

2.37 We propose that the Relevant Authorities (General Principles) Order 2001 be amended to make clear which principles govern the conduct of members when acting in an official capacity and which principles will apply to the conduct of members when acting in a non-official capacity, where the member's conduct would constitute a criminal offence.

2.38 We propose that the General Principles Order be amended by providing that the 10 existing principles apply to a member when acting in an official capacity and by adding a new principle which would be specified as applying to a member acting in a non-official capacity, where the member's conduct would constitute a criminal offence. We propose that the following be added to the Schedule of the Relevant Authorities (General Principles) Order 2001:

Duty to abide by the law

Members should not engage in conduct which constitutes a criminal offence.

Consultation Question 10:

Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

Definition of 'criminal offence' and 'official capacity'

2.39 Section 49 of the Local Government Act 2000 enables the Secretary of State to define what constitutes a 'criminal offence' and what constitutes 'official capacity' in the context of the General Principles Order. For the purposes of the revised General Principles Order, we propose that 'criminal offence' be defined as any conduct that has resulted in a criminal conviction.

Consultation Question 11:

Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

2.40 We propose that for the purposes of the revised General Principles Order, 'official capacity' be defined as "being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority".

Consultation Question 12:

Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Legislative Context

2.41 The Relevant Authorities (General Principles) Order 2001 was made under powers conferred on the Secretary of State in section 49 and 105 of the Local Government Act 2000. Section 183 of the Local Government and Public Involvement in Health Act 2007 modified section 49 of the 2000 Act and it is this modification that requires the Secretary of State to specify which general principles apply to a person when acting in an official capacity and when acting in an non-official capacity.

Chapter 3: Model code of conduct for local government employees

Is an employees' code needed?

- 3.1 A code of conduct for local government employees ("employees' code") should provide the staff of an authority with an effective ethical framework within which to work and it should give that authority's citizens confidence that an authority's staff are working on their behalf in an appropriate manner.

Consultation Question 13:

Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

The employees' code in context

- 3.2 In August 2004, the (then) Office of the Deputy Prime Minister consulted on a model code of conduct for local government employees. Responses indicated that the model code of conduct consulted on was not adequate, but also that the universal application of a code to all staff would be needlessly bureaucratic as all employees would be subject to the same code regardless of their position. There was support for following the model of the Welsh code of conduct, which only applies to a certain category of defined senior officer. Alternatively, the code could be restricted to those who exercise executive, regulatory or overview and scrutiny powers under the authority's scheme of delegation to officers.
- 3.3 Another view in response to the consultation paper was that certain aspects of the code (eg registration of interests), could be limited to senior officers while other more universal aspects should be applicable to all - for instance, it is beyond question that all employees should behave with honesty and integrity.
- 3.4 Many local authorities already have a code of conduct for employees in addition to, or part of, their standard terms and conditions of employment. These codes range from simple statements agreeing to act with propriety to comprehensive documents covering everything

from political neutrality to intellectual property matters. These codes of conduct are also integrated into the authority's discipline procedures.

- 3.5 It is not intended that the employees' code be a burden on authorities or employees. The code should not constrain an authority's ability to develop its own code reflecting local needs and conditions. We consider that authorities should be free to adopt supplementary provisions beyond the employees' code in order to provide their staff with an effective ethical framework within which to work.

Application of the employees' code

- 3.6 We propose that the employees' code would apply to all relevant authorities and police authorities in Wales, as defined in Section 49 of the Local Government Act 2000. We are proposing that a model employees' code - a model code that authorities may augment if they wish - be introduced, which will be incorporated into local government employees' terms and conditions of employment.
- 3.7 However, we do not propose to apply the employees' code where it is not needed, for instance to employees in professions that are covered by their own code of conduct; firefighters, teachers, community support officers, solicitors etc.

Consultation Question 14:

Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

Consultation Question 15:

Are there any other categories of employee in respect of whom it is not necessary to apply the code?

- 3.8 We propose a two-tier model. The first tier, drawing on the Code of Conduct (Qualifying Local Government Employees) (Wales) Order 2001, will apply equally to all authority employees and will enshrine the core values that it is reasonably expected every authority employee would abide by. The second tier, drawing on the members' code, will apply to 'qualifying employees', that is; either senior officials or those officials carrying out delegated functions.
- 3.9 With the members' code in place, and members having to abide by that code, there is a reasonable expectation that officials undertaking functions delegated to them by members would have to abide by the same conduct regime as members when performing those functions.

Proposed core values

The model employees' code: core values for all employees

General principles

The public is entitled to expect the highest standards of conduct from all local government employees. The role of such employees is to serve their employing authority in providing advice, implementing its policies and delivering services to the local community. In performing their duties, they must act with integrity, honesty, impartiality and objectivity.

Accountability

Employees are accountable, and owe a duty to, their employing authority. They must act in accordance with the principles set out in this Code, recognising the duty of all public sector employees to discharge public functions reasonably and according to the law.

Political neutrality

Employees, excluding political assistants, must follow every lawfully expressed policy of the authority and must not allow their own personal or political opinions to interfere with their work. Where employees are politically restricted, by reason of the post they hold or the nature of the work they do, they must comply with any statutory restrictions on political activities.

Relations with members, the public and other employees

Mutual respect between employees and members is essential to good local government and working relationships should be kept on a professional basis. Employees of relevant authorities should deal with the public, members and other employees sympathetically, efficiently and without bias.

Equality

Employees must comply with policies relating to equality issues, as agreed by the authority, in addition to the requirements of the law.

Stewardship

Employees of relevant authorities must ensure that they use public funds entrusted to them in a responsible and lawful manner and must not utilise property, vehicles or other facilities of the authority for personal use unless authorised to do so.

Personal interests

An employee must not allow their private interests or beliefs to conflict with their professional duty. They must not misuse their official position or information acquired in the course of their employment to further their private interest or the interests of others.

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to

do business with the authority or which would benefit from a relationship with that authority. Employees should not accept benefits from a third party unless authorised to do so by their authority.

Whistleblowing

Where an employee becomes aware of activities which that employee believes to be illegal, improper, unethical or otherwise inconsistent with the model code of conduct for employees, the employee should report the matter, acting in accordance with the employees rights under the Public Interest Disclosure Act 1998 and with the authority's confidential reporting procedure or any other procedure designed for this purpose.

Treatment of Information

Openness in the dissemination of information and decision making should be the norm in authorities. However, certain information may be confidential or sensitive and therefore not appropriate to a wide audience. Where confidentiality is necessary to protect the privacy or other rights of individuals or bodies, information should not be released to anyone other than a member, relevant authority employee or other person who is entitled to receive it, or needs to have access to it for the proper discharge of their functions. Nothing in this Code can be taken as overriding existing statutory or common law obligations to keep certain information confidential, or to divulge certain information.

Appointment of staff

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

Investigations by monitoring officers

Where a monitoring officer is undertaking an investigation in accordance with Part III of the Local Government Act 2000 and associated regulations, employees must comply with any requirement made by that monitoring officer in connection with such an investigation.

Consultation Question 16:

Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?

Beyond the core values

Who are the 'qualifying employees'?

- 3.10 There are two alternatives for selecting those 'qualifying employees' to which, in addition to the core values of the employees' code, some of the restrictions and expectations of the members' code should apply.
- 3.11 The first is based on the approach taken to determining which posts in an authority are 'politically restricted' under section 3 of the Local Government and Housing Act 1989, and assumes that certain posts are senior or influential enough to warrant controls placed on the activities of postholders. Certain posts would be designated as qualifying employees.
- 3.12 The second is the delegation model, which would see qualifying employees selected on the basis that they perform functions delegated to them by elected members under section 101 of the Local Government Act 1972.

Consultation Question 17:

Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?

The model employees' code: values for qualifying employees

Compromising the impartiality of officers of the authority

A qualifying employee must not compromise, or attempt to compromise, the impartiality of anyone who works for or on behalf of the authority, either directly or as a response to pressure from others. A qualifying employee should not attempt to force employees to take action or change advice if doing so would prejudice their professional integrity.

Using your position improperly

A qualifying employee must not use, or attempt to use, their position improperly either for their or anybody else's advantage or disadvantage.

Considering advice provided to you and giving reasons

If a qualifying employee seeks advice, or advice is offered to them, on aspects of how the employees' code applies, the qualifying employee must have regard to this advice.

Personal interest

Qualifying employees must register, within 28 days of taking up their appointment, any interests set out in the categories below. This record of interest must be in writing, to the authority's monitoring officer or, in the case of a parish council, through the parish clerk.

The registration of interests protects the qualifying employee by giving early warning of any possible areas of conflict of interest and provides assurance to the public that the qualifying employee is acting transparently. Only registration of personal interests in areas where there are clear grounds for concern that such an interest could give rise to accusations of partiality in decision making and working practice of the authority are required.

These are:

- Your membership, or position of control or management, in bodies exercising functions of a public nature (that is, carrying out a public service, taking the place of a local or central governmental body in providing a service, exercising a function delegated by a local authority or exercising a function under legislation or a statutory power).
- Any business you might own or have a share in, where that shareholding is greater than £25,000 or have a stake of more than 1/100th of the value or share capital of the company.
- Any contracts between the authority and any company you have an interest in, as above.
- Any land or property in the authority's area in which you have a beneficial interest.

A qualifying employee may seek to exempt their personal interests from the register of interests if they consider, for instance that having this information on record might put themselves or others at risk. In such cases, the qualifying employee should discuss the matter with their monitoring officer.

Consultation Question 18:

Should the code contain a requirement for qualifying employees to publicly register any interests?

Consultation Question 19:

Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

Prejudicial interest

A prejudicial interest is considered to be a matter which affects the qualifying employee's financial interest or relates to a licensing or regulatory matter in which he or she has an interest and where a member of the public, who knows the relevant facts, would reasonably think that his or her personal interest is so significant that it is likely to prejudice his or her judgement of the public interest.

A prejudicial interest in a licensing or regulatory matter may stem from a direct financial interest or from a more tangential interest, where for instance approval for a licence may affect a body with which the qualifying employee has a personal interest or will affect him or her personally.

Qualifying employees with a prejudicial interest should declare such an interest. Where possible, they should take steps to avoid influential involvement in the matter. Where this is not possible, their prejudicial interest should be made clear.

Consultation Question 20:

Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code. Have any been omitted?

Consultation Question 21:

Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Contractors, partners and part time staff

3.13 Local authorities have an increasingly complex relationship with the private sector in its work with contractors, partners and part time staff. We consider that rather than attempt to determine centrally when and when not to apply the employees' code not just to local government employees, but those working on behalf of local government, it will be for local authorities themselves to decide, in agreeing contracts, partnership agreements or terms and conditions of employment, if and how the employees' code, in whole or in part, should apply.

Parish councils

3.14 The members' code applies to parish councillors as well as members of larger authorities, and it seems reasonable therefore for the ethical framework of the employees' code to apply to parish council employees. We recognise that the environment that parish councillors operate within is different to that of larger authorities and are conscious that what is consider to be a reasonable expectation in the employees' code for larger councils, may prove to be difficult for parish councils.

3.15 That being the case, we would welcome responses from parish councils on any particular aspect of the employees' code that might present difficulties and how those difficulties could be overcome.

Consultation Question 22:

Should the employees' code extend to employees of parish councils?

Legislative context

3.16 Section 82(7) of the Local Government Act 2000, provides that the provisions of a code made under section 82(1) of that Act will be deemed to be incorporated in employees' terms and conditions of employment.

Annex A: List of consultation questions

Chapter 2: Code of conduct for local authority members

- Question 1 Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?
- Question 2 Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.
- Question 3 Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.
- Question 4 Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?
- Question 5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?
- Question 6 Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?
- Question 7 Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?
- Question 8 Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.
- Question 9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?
- Question 10 Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

- Question 11 Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?
- Question 12 Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

Chapter 3 Model Code of Conduct for local authority employees

- Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?
- Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?
- Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?
- Question 16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?
- Question 17 Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?
- Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests?
- Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
- Question 20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?
- Question 21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?
- Question 22 Should the employees' code extend to employees of parish councils?

Annex B

SCHEDULE

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

1.—(1) This Code applies to **you** as a member of an authority.

(2) You should read this Code together with the general principles prescribed by the Secretary of State.

(3) It is your responsibility to comply with the provisions of this Code.

(4) In this Code—

“meeting” means any meeting of—

(a)

the authority;

(b)

the executive of the authority;

(c)

any of the authority’s or its executive’s committees, sub-committees, joint committees, joint sub-committees, or area committees;

“member” includes a co-opted member and an appointed member.

(5) In relation to a parish council, references to an authority’s monitoring officer and an authority’s standards committee shall be read, respectively, as references to the monitoring officer and the standards committee of the district council or unitary county council which has functions in relation to the parish council for which it is responsible under section 55(12) of the Local Government Act 2000.

Scope

2.—(1) Subject to sub-paragraphs (2) to (5), you must comply with this Code whenever you—

(a) conduct the business of your authority (which, in this Code, includes the business of the office to which you are elected or appointed); or

(b) act, claim to act or give the impression you are acting as a representative of your authority,

and references to your official capacity are construed accordingly.

(2) Subject to sub-paragraphs (3) and (4), this Code does not have effect in relation to your conduct other than where it is in your official capacity.

(3) In addition to having effect in relation to conduct in your official capacity, paragraphs 3(2)(c), 5 and 6(a) also have effect, at any other time, where that conduct constitutes a criminal offence for which you have been convicted.

(4) Conduct to which this Code applies (whether that is conduct in your official capacity or conduct mentioned in sub-paragraph (3)) includes a criminal offence for which you are convicted (including an offence you committed before the date you took office, but for which you are convicted after that date).

(5) Where you act as a representative of your authority—

(a) on another relevant authority, you must, when acting for that other authority, comply with that other authority's code of conduct; or

(b) on any other body, you must, when acting for that other body, comply with your authority's code of conduct, except and insofar as it conflicts with any other lawful obligations to which that other body may be subject.

General obligations

3.—(1) You must treat others with respect.

(2) You must not—

(a) do anything which may cause your authority to breach any of the equality enactments (as defined in section 33 of the Equality Act 2006);

(b) bully any person;

(c) intimidate or attempt to intimidate any person who is or is likely to be—

(i) a complainant,

(ii) a witness, or

(iii) involved in the administration of any investigation or proceedings,

in relation to an allegation that a member (including yourself) has failed to comply with his or her authority's code of conduct; or

(d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, your authority.

(3) In relation to police authorities and the Metropolitan Police Authority, for the purposes of sub-paragraph (2)(d) those who work for, or on behalf of, an authority are deemed to include a police officer.

4. You must not—

(a) disclose information given to you in confidence by anyone, or information acquired by you which you believe, or ought reasonably to be aware, is of a confidential nature, except where—

(i) you have the consent of a person authorised to give it;

(ii) you are required by law to do so;

(iii) the disclosure is made to a third party for the purpose of obtaining professional advice provided that the third party agrees not to disclose the information to any other person; or

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

(bb) made in good faith and in compliance with the reasonable requirements of the authority; or

(b) prevent another person from gaining access to information to which that person is entitled by law.

5. You must not conduct yourself in a manner which could reasonably be regarded as bringing your office or authority into disrepute.

6. You—

(a) must not use or attempt to use your position as a member improperly to confer on or secure for yourself or any other person, an advantage or disadvantage; and

(b) must, when using or authorising the use by others of the resources of your authority—

(i) act in accordance with your authority's reasonable requirements;

(ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and

(c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

7.—(1) When reaching decisions on any matter you must have regard to any relevant advice provided to you by—

(a) your authority's chief finance officer; or

(b) your authority's monitoring officer,

where that officer is acting pursuant to his or her statutory duties.

(2) You must give reasons for all decisions in accordance with any statutory requirements and any reasonable additional requirements imposed by your authority.

Part 2 Interests

Personal interests

8.—(1) You have a personal interest in any business of your authority where either—

(a) it relates to or is likely to affect—

(i) any body of which you are a member or in a position of general control or management and to which you are appointed or nominated by your authority;

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

(cc) one of whose principal purposes includes the influence of public opinion or policy (including any political party or trade union),

of which you are a member or in a position of general control or management;

(iii) any employment or business carried on by you;

(iv) any person or body who employs or has appointed you;

(v) any person or body, other than a relevant authority, who has made a payment to you in respect of your election or any expenses incurred by you in carrying out your duties;

(vi) any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital (whichever is the lower);

(vii) any contract for goods, services or works made between your authority and you or a

firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

(viii) the interests of any person from whom you have received a gift or hospitality with an estimated value of at least £25;

(ix) any land in your authority's area in which you have a beneficial interest;

(x) any land where the landlord is your authority and you are, or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi) is, the tenant;

(xi) any land in the authority's area for which you have a licence (alone or jointly with others) to occupy for 28 days or longer; or

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial position or the well-being or financial position of a relevant person to a greater extent than the majority of—

(i) (in the case of authorities with electoral divisions or wards) other council tax payers, ratepayers or inhabitants of the electoral division or ward, as the case may be, affected by the decision;

(ii) (in the case of the Greater London Authority) other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or

(iii) (in all other cases) other council tax payers, ratepayers or inhabitants of your authority's area.

(2) In sub-paragraph (1)(b), a relevant person is—

(a) a member of your family or any person with whom you have a close association; or

(b) any person or body who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;

(c) any person or body in whom such persons have a beneficial interest in a class of securities exceeding the nominal value of £25,000; or

(d) any body of a type described in sub-paragraph (1)(a)(i) or (ii).

Disclosure of personal interests

9.—(1) Subject to sub-paragraphs (2) to (7), where you have a personal interest in any business of your authority and you attend a meeting of your authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest at the commencement of that consideration, or when the interest becomes apparent.

(2) Where you have a personal interest in any business of your authority which relates to or is likely to affect a person described in paragraph 8(1)(a)(i) or 8(1)(a)(ii)(aa), you need only disclose to the meeting the existence and nature of that interest when you address the meeting on that business.

(3) Where you have a personal interest in any business of the authority of the type mentioned in paragraph 8(1)(a)(viii), you need not disclose the nature or existence of that interest to the meeting if the interest was registered more than three years before the date of the meeting.

(4) Sub-paragraph (1) only applies where you are aware or ought reasonably to be aware of the existence of the personal interest.

(5) Where you have a personal interest but, by virtue of paragraph 14, sensitive information relating to it is not registered in your authority's register of members' interests,

you must indicate to the meeting that you have a personal interest, but need not disclose the sensitive information to the meeting.

(6) Subject to paragraph 12(1)(b), where you have a personal interest in any business of your authority and you have made an executive decision in relation to that business, you must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph, “executive decision” is to be construed in accordance with any regulations made by the Secretary of State under section 22 of the Local Government Act 2000.

Prejudicial interest generally

10.—(1) Subject to sub-paragraph (2), where you have a personal interest in any business of your authority you also have a prejudicial interest in that business where the interest is one which a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice your judgement of the public interest.

(2) You do not have a prejudicial interest in any business of the authority where that business—

(a) does not affect your financial position or the financial position of a person or body described in paragraph 8;

(b) does not relate to the determining of any approval, consent, licence, permission or registration in relation to you or any person or body described in paragraph 8; or

(c) relates to the functions of your authority in respect of—

(i) housing, where you are a tenant of your authority provided that those functions do not relate particularly to your tenancy or lease;

(ii) school meals or school transport and travelling expenses, where you are a parent or guardian of a child in full time education, or are a parent governor of a school, unless it relates particularly to the school which the child attends;

(iii) statutory sick pay under Part XI of the Social Security Contributions and Benefits Act 1992, where you are in receipt of, or are entitled to the receipt of, such pay;

(iv) an allowance, payment or indemnity given to members;

(v) any ceremonial honour given to members; and

(vi) setting council tax or a precept under the Local Government Finance Act 1992.

Prejudicial interests arising in relation to overview and scrutiny committees

11. You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where—

(a) that business relates to a decision made (whether implemented or not) or action taken by your authority’s executive or another of your authority’s committees, sub-committees, joint committees or joint sub-committees; and

(b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.

Effect of prejudicial interests on participation

12.—(1) Subject to sub-paragraph (2), where you have a prejudicial interest in any business of your authority—

(a) you must withdraw from the room or chamber where a meeting considering the business is being held—

(i) in a case where sub-paragraph (2) applies, immediately after making representations, answering questions or giving evidence;

(ii) in any other case, whenever it becomes apparent that the business is being considered at that meeting;

unless you have obtained a dispensation from your authority’s standards committee;

(b) you must not exercise executive functions in relation to that business; and

(c) you must not seek improperly to influence a decision about that business.

(2) Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise.

Part 3

Registration of Members’ Interests

Registration of members’ interests

13.—(1) Subject to paragraph 14, you must, within 28 days of—

(a) this Code being adopted by or applied to your authority; or

(b) your election or appointment to office (where that is later),

register in your authority’s register of members’ interests (maintained under section 81(1) of the Local Government Act 2000) details of your personal interests where they fall within a category mentioned in paragraph 8(1)(a), by providing written notification to your authority’s monitoring officer.

(2) Subject to paragraph 14, you must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under paragraph (1), register details of that new personal interest or change by providing written notification to your authority’s monitoring officer.

Sensitive information

14.—(1) Where you consider that the information relating to any of your personal interests is sensitive information, and your authority’s monitoring officer agrees, you need not include that information when registering that interest, or, as the case may be, a change to that interest under paragraph 13.

(2) You must, within 28 days of becoming aware of any change of circumstances which means that information excluded under paragraph (1) is no longer sensitive information, notify your authority’s monitoring officer asking that the information be included in your authority’s register of members’ interests.

(3) In this Code, “sensitive information” means information whose availability for inspection by the public creates, or is likely to create, a serious risk that you or a person who lives with you may be subjected to violence or intimidation.

Annex C: Consultation Code of Practice

- A.1 The Government has adopted a code of practice on consultations. The criteria below apply to all UK national public consultations on the basis of a document in electronic or printed form. They will often be relevant to other sorts of consultation.
- A.2 Though they have no legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law), they should otherwise generally be regarded as binding on UK departments and their agencies; unless Ministers conclude that exceptional circumstances require a departure.

The Consultation Criteria

- Consult widely throughout the process, allowing a minimum of
 - 12 weeks for written consultation at least once during the development of the policy
 - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 - Ensure that your consultation is clear, concise and widely accessible.
 - Give feedback regarding the responses received and how the consultation process influenced the policy.
 - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
 - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- A.3 The full consultation code of practice may be viewed at: www.bre.berr.gov.uk/regulation/consultation/code/index.asp.

A.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

Consultation Co-ordinator
Communities and Local Government
Zone 6/H10
Eland House
Bressenden Place
London
SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk

ISBN: 978 14098 0549 6



Communities in Control Consultation
Code of Conduct
City of Durham Response
List of consultation questions

Chapter 2: Code of conduct for local authority members

Question 1 Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?

Yes. The public find it difficult to understand that a member should have two standards and will always consider that poor behaviour in private life reflects on the office held in public life. Why limit it to criminal behaviour?

Question 2 Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.

No. Why not include all offences. Number of fixed penalty notices could show a pattern of behaviour that is inappropriate. What if the fixed penalty notice is for example for an environmental offence – noise, nuisance, rubbish etc.? Surely a member is expected not to commit such offences more so than any other? Limiting the definition to anything other than fixed penalty notices therefore is not satisfactory.

Question 3 Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details. Yes.

Question 4 Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK? Yes

Question 5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed? **Yes**

Question 6 Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

Yes.

Whether a member has a prejudicial interest or personal interest seems to be the most common question raised by members (the person responding to this consultation has experience of this from three Authorities in which he works). This must mean the wording is confusing and perhaps thought needs to be given to making it clearer and setting it out better than it currently is. Some find it difficult to follow.

Question 7 Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?

The overall question of civility at meetings. There is too much weight given to it being simply party politics or political banter and that is used as an excuse to say it is not a breach when in fact people are being rude and offensive. That is not party politics or tit for tat banter but has been an often given excuse not to uphold a breach of the code. This behaviour seems to occur more at Parish level when usually politics is not the issue.

Question 8 Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.

None so far as aware

Question 9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?

Why is it necessary to provide a timescale? Surely a member knows that high standards are expected of him or her and therefore is it not simpler to say that a member is deemed to have accepted the Code from the date he or she is elected to office or when the Code is brought into force by Parliament?

Question 10 Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?

Yes, but is limiting conduct that amounts to a criminal offence sufficient?

Why not make the General Principles part of the Code itself so that a breach of a Principle is clearly a breach of the Code? Is not this better than a vague statement that "a failure to act in accordance with them may lead to a failure to comply with the members' code"?

Question 11 Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?

No. A criminal offence is surely any offence that breaches the laws of the land. There have to be high standards in public office.

Question 12 Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order? Yes

Chapter 3 Model Code of Conduct for local authority employees

Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?

Yes but apply it to all. There is the danger of duplicity. A solicitor for example is required to comply with his or her professional code. Care would be needed to ensure there was no conflict. But see Question 14 below.

Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?

It is odd to suggest a code for all employees and then exempt some because of the job they are in. Surely it should be applied to all with a provision that "where there is a conflict with this code and any code of conduct that an employee is subject to by virtue of his or her profession then the latter shall prevail."

Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?

If the above suggestion is followed this is not necessary. All employees should be subject to it.

Question 16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included? Yes.

Question 17 Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model? The Council leans toward the delegation model in s101 of the LGA 1972.

Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests? **Yes**

Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?

Where the reference to “have an interest in” crops up perhaps that should also include “you or members of your family or those you are closely acquainted with” as it does with members.

Question 20 Does the section of the employees’ code which will apply to qualifying employees capture all pertinent aspects of the members’ code? Have any been omitted?

It appears so but consideration should be given to the suggestion given in 19 above.

Question 21 Does the section of the employees’ code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

No, provided it is all worded simply and clearly it should not present any problems with compliance.

Question 22 Should the employees’ code extend to employees of parish councils? **Yes.**

Guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from a Standards Committee under Regulation 17 of the Standards Committee (England) Regulations 2008.

1. The Standards Committee (England) Regulations 2008 include provision (Regulation 17 (1) (c)) for a Standards Committee to make a finding that a matter should be referred for determination by the Adjudication Panel. Before such a referral can be made the Standards Committee need themselves to have determined that the action which the Standards Committee could itself take (if there were a finding that there had been a failure to follow the provisions of the Code) would be insufficient. The reference itself can be made only if the President or Deputy President has agreed to accept it.
2. The possibility of such a reference arises only after a monitoring officer has produced a report for the Standards Committee. The President of the Adjudication Panel is willing to indicate, prior to the consideration of that report by the Standards Committee, whether he would agree to accept such a referral. Such agreement would not commit the Standards Committee to making such a referral but would avoid the Standards Committee seeking to refer matters which were not suitable.
3. The maximum sanction which a Standards Committee can impose is a suspension for a period of six months. Thus the primary question to determine as to whether a reference can be accepted is whether, if a breach of the Code had occurred, a more severe sanction than six months suspension would be appropriate.
4. It would be rare for the Adjudication Panel's Case Tribunals to impose a suspension for longer than six months, not least because the effect of such a lengthy suspension might be seen as leading to constituents being left without effective representation at a time when the suspended elected member is not able to fulfil his responsibilities.
5. Less rarely, however, a Case Tribunal will **disqualify** an elected member. Whereas a suspension will apply only to the particular council whose Code of Conduct has not been followed, a disqualification will preclude the member concerned from being appointed to **any** relevant authority. Thus it would be an appropriate sanction for a member whose conduct leads to the view that the member concerned is unfit to hold such public office.
6. The Adjudication Panel has already published guidance ([Guidance on decisions available to a Case Tribunal](#)) as to when disqualification is likely to be an appropriate sanction. The following is an extract from that guidance:
 - 14.1 *The Respondent has deliberately sought personal gain (for either him or herself or some other person) at the public expense by exploiting his or her membership of the body subject to the Code of Conduct.*
 - 14.2 *The Respondent has deliberately sought to misuse his or her position in order to disadvantage some other person.*

- 14.3 *The Respondent has deliberately failed to abide by the Code of Conduct, for example as a protest against the legislative scheme of which the Code forms part. Members of local authorities are expected to uphold the law. Where the Code has been deliberately breached to reflect the Respondent's opposition to the principles underlying the legislation, the Case Tribunal is likely to think of a disqualification of one year.*
- 14.4 *There have been repeated breaches of the Code of Conduct by the Respondent.*
- 14.5 *The Respondent has misused power or public assets for political gain.*
- 14.6 *The Respondent has misused council property.*
- 14.7 *The Respondent has committed a criminal offence punishable by a sentence of three months or more imprisonment.*
15. *There may be other factors not listed above which also merit disqualification. Nor will disqualification always be appropriate even if the listed factors are present.*
17. *Disqualification may be imposed as an alternative to suspension in order to avoid an authority being inquorate or the electorate left without adequate representation. Disqualification would allow by-elections to take place whereas this would not be possible if the member concerned were suspended.*
7. The President or Deputy President is likely to agree to accept references for matters which are of a kind which would merit disqualification.
8. It is important to bear in mind that the decisions on whether to refer, and whether to accept such a referral, are being made on the hypothetical basis of a finding that there has been a breach of the Code of Conduct. In taking a decision as to whether to accept a proposed reference, the President or Deputy President would not usually seek to form a view as to how likely it is that such a finding would be made. Nor would they usually seek to form a view on whether there are particular mitigating circumstances which would cause a Case Tribunal not to disqualify a member even though such disqualification might usually be seen as appropriate for a breach of the kind concerned. Those are decisions which should properly be left to the Case Tribunal hearing the case.
9. A reference to the Adjudication Panel should include:
- a brief description of the conduct which has given rise to the complaint
 - details of:
 - when the member was elected.
 - when the member made a declaration to abide by the Code.
 - relevant training the member has received.
 - the member's committee membership or Executive responsibilities; and
 - a note of any appointments to other bodies on behalf of the council and of any membership of other relevant authorities.
 - a copy of the relevant Code of Conduct should be appended.
 - the reference should indicate what paragraphs of the Code have been under consideration.
 - the investigating officer's report to the Standards Committee should be appended. The Standards Board for England has provided a template for such a report in its publication '[Local Standards Framework - Guide for Authorities.](#)'
 - A list giving the names, addresses and contact details of:
 - the respondent.
 - complainant.
 - monitoring officer.
 - investigating officer.
 - Standards Committee correspondent.
 - any legal representatives.

THE CASE REVIEW: 2008 DIGEST

Introduction

The *Case Review 2007* presented a paragraph-by-paragraph analysis of the revised Code of Conduct. This short digest provides you with any new information or cases that we think may be helpful or interesting for you when using that publication. We are not updating and reprinting the whole document due to the limited extent of the changes, but hope that this digest will act as a useful accompaniment.

The updates in this document relate only to certain paragraphs of the Code, where we think further information will be helpful. We have included new and relevant case examples where appropriate. We have also highlighted any new issues that have arisen over the past year.

In addition, there is a section at the end of this document called **Examples on procedural matters**. This consists of case examples that do not necessarily fit under particular paragraphs of the Code, but which you may find useful.

To get the most from this publication, please read it in conjunction with the *Case Review 2007*. If you do not have a copy of the *Case Review 2007*, you can download it for free from our website, www.standardsboard.gov.uk.

If you would like to order a hard copy at a cost of £20, please email publications@standardsboard.gov.uk or call **0161 817 5300**.

Key changes

Since the *Case Review 2007* was published, changes brought about by the Local Government and Public Involvement in Health Act 2007 have seen complaints being dealt with by local authorities. The Standards Board has had a major shift in its focus as a result of this change. We are now a strategic regulator, providing national oversight of the locally owned system.

The key changes to local complaints assessments, which were brought into effect by new and revised regulations, apply only to standards committees of authorities in England. There is no change to the arrangements in complaints assessment for police authorities in Wales and these continue to be dealt with by the Public Services Ombudsman for Wales. We are currently working with our Welsh partners to produce a relevant version of our *Local Standards Framework guidance*, in Welsh.

The government is still reconsidering the way in which the Code does, and does not, impact on someone when they are not acting in their capacity as a member. The changes brought in by the 2007 Act, coupled with the revised Code of 2007, aim to bring certain types of criminal conduct within the scope of the legislation. This is criminal conduct which has resulted in a conviction, even where the activity has not been carried out in an official capacity. At the time of writing, these provisions are not yet in force although consultation on the matter has now started.

paragraph 1

Rulings over members.

The government has now made it a legal requirement that all standards committees must be chaired by an independent member. Also sub-committees of standard committees must be chaired by an independent member when assessing and reviewing complaints, considering reports or when they are actually hearing a complaint.

Furthermore, regulation 5 of the Standards Committee (England) Regulations 2008 no.1085, allows authorities to adopt procedures which govern the temporary appointments of “shared” independent members. They can be appointed to deal with particular allegations or members, and can be appointed for specified periods of time.

In addition, the Local Government Act 1972 has recently been amended by the addition of a new Section 16A. This grants parish councils the power to “appoint persons to be councillors of the council”. Regulations under this section are still awaited.

Whether “meeting” also includes informal meetings.

This is a frequently asked question about paragraph 1 of the Code of Conduct. The answer is no. Informal meetings between members and officers and political group meetings are not covered by the requirement to declare interests (see Q4 on page 8 of the Case

Review 2007 for more information on this). In the case of APE 0355, the Adjudication Panel for England, in a preliminary issue, had to decide if meetings of the “Development Plans Policy Project Group” were meetings for the purposes of the Code.

The Tribunal reasoned that it was perfectly proper for an authority to set up either a working party or a committee or sub-committee to advise the authority on any matter it saw fit.

Generally, the authority’s subjective intention would determine this issue:

“Where the manifest intention of the local authority was to create a working party that should be decisive unless there was something unlawful behind the intention.” - R, v Warwickshire District Council exp Bailey [1991] COD 284

However, paragraph 6(a) of the Code, which prevents members from using their position improperly, applies at all times when members are acting in their official capacity.

A member should not use pre-meetings or informal meetings to influence a matter in which they have a prejudicial interest. If they do so, they are very likely to fail to comply with the Code by improperly seeking to influence a decision.

paragraph2

Applying the Code of Conduct to members working in a private capacity or representing authorities.

In Q9 under paragraph 2 of the *Case Review 2007*, we answered the question “**When does the Code of Conduct apply?**”.

We would like to add that the issue of whether a member has been representing an authority or acting in a private capacity is something which must be established. This is because it decides whether the Code applies to a member at all.

Ideally this will be established when assessing complaints. However, sometimes it will only become clear during an investigation.

When the Code ceases to apply to suspended members.

The Standards Board is currently considering its position on the consequences of suspension.

If you have any queries about this, please get in touch with us.

Application of the Code when a member is carrying out an activity which is not official business.

A recent case (APE 0389) illustrated the application of the Code when a member is carrying out an activity, which is not in their official capacity.

In this case, the Adjudication Panel for England had to consider the test previously set out by Mr Justice Collins in the High Court case concerning the former Mayor of London, Ken Livingstone.

The Adjudication Panel decided that the councillor was subject to the Code when he used a council computer to access indecent images of children. This case was considered in the context of paragraphs 4 and 5 of the Code.

Here are some further case examples that relate to paragraph 2 of the Code.

Example 1

In APE 0401, the member appealed against a standards committee finding under the 2001 Code. The standards committee had found that the member had failed to treat others with respect and brought his office or authority into disrepute. This was by using his position to gain entry to a council-funded organisation and then:

- demanding information from staff
- becoming aggressive
- threatening staff's employment
- refusing to leave until senior staff threatened to call the police

The Adjudication Panel for England decided that the standards committee had failed to address whether the member's conduct was undertaken

paragraph2

Continued ...

in an official capacity. In the Tribunal's view, the judgment in the Livingstone case established that for a member to be acting in their official capacity:

- 1) they should be engaged in business directly related to the Council or constituents
- 2) the link between office and the conduct should have a degree of formality

The Tribunal found that the member was not on council business and there was no apparent relationship between the purpose of his visit and any relevant function of the council. The mere fact that he declared himself a councillor while undertaking his visit could not justify a conclusion that he was acting in his official capacity. Accordingly, the Tribunal decided that the member did not fail to treat others with respect in his capacity as a councillor.

However, by so clearly identifying himself as a councillor, his conduct had come within paragraph 4 of the Code. This says that "a member must not in his official capacity or any other circumstances, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute". Even on the restrictive definition of "in any other circumstance" as set out in the Livingstone case, his behaviour was caught by the Code, and therefore the finding of a breach was upheld.

paragraph3

Here are three new case examples that relate to paragraph 3 of the Code of Conduct.

Example 1

In APE 0378, a councillor wrote to an officer, the chief executive, in rude terms demanding action where she had no authority to do so. In this instance, the Adjudication Panel for England decided that the member had not shown disrespect to the chief executive of the authority. The Adjudication Panel decided that sufficient weight had to be given to the fact that the officer was the chief executive, and it was significant that there was no direct personal attack on that officer.

Conversely, the Adjudication Panel did find that there was disrespect shown to a senior police officer. This is because the councillor did not address him respectfully in email correspondence and referred to him by his surname outside of the expected norms of such relationships. This was compounded by the circulation of the offending emails to junior and senior officers within both organisations.

Example 2

In the same case above, APE 0378, the tribunal considered whether racist comments can have a political dimension and examined whether they could be afforded the protection of freedom of expression under Article 10.

The councillor made a complaint about planning enforcement, stating that “those wishing to buck the system were usually of ethnic origin”.

The Tribunal considered the High Court case of Sanders v Kingston on the degree of protection a councillor is entitled to when considering that councillor’s right to freedom of expression. The Adjudication Panel summarised the judge’s reasoning and concluded “that a person is entitled to the extremely high level of protection which the authorities demonstrate must be given to political expression because of its fundamental importance for the maintenance of a democratic society. However, a factual investigation of the nature of the words used is necessary to determine whether they amount to political expression, or whether they are no more than expressions of personal anger and personal abuse”.

The Tribunal decided that where a member based expressions of opinion on prejudice against people it would, in the mind of a reasonable person, bring both the office and authority into disrepute. This is not only due to the authority’s statutory duties under anti-discrimination legislation, but also because such attitudes fall far short of what is expected of those holding public office.

Example 3

The Tribunal in the case of APE 0399 considered the threshold for a failure to treat

paragraph3

Continued ...

others with respect. The subject member made comments about the town clerk at a parish meeting saying that an officer found her “difficult to get on with”. The member added that “this is also the view of many town’s people who say that when they try to contact the town clerk, she is downright rude to them”.

The Tribunal considered that the threshold for a failure to treat another with respect has to be set at a level that allows for the passion and frustration that often accompanies political debate and the discussion of the efficient running of a council. It should also be set within the context of who was involved in the exchange.

In this case, the comments were opinions of other individuals which the member honestly believed to be true. The member’s conduct was not unfair, unreasonable or demeaning to the town clerk and not made in a malicious or bullying manner. The town clerk was very experienced in her dealings with councillors and given her seniority was entirely able to defend her position. So the Tribunal decided that the threshold was not met.

paragraph4

There are no updates to paragraph 4

paragraph5

Here are two new case examples that relate to paragraph 5 of the Code of Conduct.

Example 1

The Adjudication Panel for England considered case APE 0383 under the 2001 Code. In this case, a councillor was given information in a private briefing to councillors. The briefing was about the council's proposals to buy land and relocate its offices to another town.

The information was made public swiftly after this. The councillor did not agree with the proposals, and secretly bought the land to prevent the council considering it as an option for its future operations. The link to his office was clearly made.

Together with the lack of openness, these actions diminished public confidence in his ability to discharge his office as a councillor. He had therefore conducted himself in a manner which would reasonably be regarded as bringing his office or authority into disrepute. He had also failed to register the exchange of contracts in the land within 28 days. However, the Tribunal decided that he had not improperly sought to secure an advantage or disadvantage. This is discussed further in the cases given under paragraph 6 on page 8.

Example 2

The Adjudication Panel for England decided that a member had brought his office or authority into disrepute in the case APE 0387, under the 2001 Code.

In this case, the member had issued threats to another member immediately before a planning decision was taken. The threats concerned the deselection of the councillor and were coupled with offensive language. These threats were overheard.

The Tribunal did not find these threats improper in the context of political life, and accepted that future careers could be affected by the way a member voted.

However, the Tribunal did find that the comments were disreputable. This was especially so when there was a planning protocol which had been adopted by the council, although not incorporated in the council's code of conduct. The threats and actions of the member constituted a failure to follow that guidance and a breach of that protocol, and so were sufficient to be disreputable.

paragraph6

In the Case Review 2007, we asked “What kinds of attempts to secure advantages or disadvantages would be improper?”.

Here are two further case examples which relate to this question.

Example 1

The Adjudication Panel for England considered a case under the old Code of Conduct, APE 0383.

In this case, the council intended to purchase land to relocate its offices from one town to another. The council provided information privately to councillors but swiftly after this, made all the information public.

The subject member privately purchased the land to prevent the council from buying it, because he did not agree with the relocation plans. The councillor also incurred a significant loss in the venture.

The Tribunal decided that because he was acting in the public interest, however misguided, and gained no benefit, he did not use his position improperly to secure an advantage or disadvantage. However, the Tribunal did decide that he had brought his office or authority into disrepute and this is dealt with under paragraph 5 on page 7.

Example 2

In a case decided by the Adjudication Panel concerning a mayor, APE 0382, the Tribunal decided that there was no attempt to improperly secure an advantage or disadvantage.

This was in a situation where the member held a meeting, whose purpose was unclear, with one of two parties who were in dispute with each other and the council. Officers were not present at the meeting.

The mayor had previously been a director of one of the parties and at the meeting personally drew up a document whose purpose was uncertain. The Tribunal concluded that the actions were foolhardy and there was an unexplained pattern of behaviour favouring one party. However foolish the actions were, they did not amount to a breach of the Code.

paragraphs 7-10

There are no updates to paragraphs 7-10

paragraph 11

Whether members who have prejudicial interests can nevertheless remain in the meeting after they have answered questions and given their evidence to the committee.

This is a frequently asked question on paragraph 11 of the Code of Conduct. We are aware that some authorities actively encourage all their members to attend overview and scrutiny meetings to better inform and improve the quality of the authority's decision-making.

Our view is that the decision of the Court of Appeal in Richardson would still apply in these circumstances and that normally, after their statutory role is finished, members with prejudicial interests should withdraw from the room.

paragraph12

Here is an example relating to paragraph 12 of the Code of Conduct.

Example 1

In APE 0395, an appeal from a standards committee, the member declared a personal and prejudicial interest and withdrew from the meeting. He returned after the conclusion of the item to chair the remainder of the agenda.

The standard agenda item enabling members of the public to raise issues they would like to be included on the next meeting's agenda was then considered. At this point, a member of the public expressed dissatisfaction about the minimal progress made in reaching a decision on the item in which the chair had previously declared the interest. A short exchange then followed between some councillors and that member of the public.

The tribunal decided that this exchange did not constitute consideration for the purposes of the Code, as there was no intention to have a further discussion on that item.

paragraphs13-14

There are no updates to paragraphs 13-14

examples on procedural matters

The following are case examples of procedural matters which do not necessarily fall under particular paragraphs of the Code of Conduct.

Example 1

In the case APE 0403, the appeals tribunal was of the view that whether or not advice is provided, it is the personal responsibility of a member to determine if they have a prejudicial interest and so whether they need to withdraw. This means that even if a member relies on incorrect legal advice, it does not mean that a breach has not been committed. Any advice sought or given only affects the seriousness of the breach and therefore the sanction.

Example 2

The appeals tribunal decided in the case APE 0403, that a standards committee does not exceed its jurisdiction by dealing with a matter that has not been complained about. In this case, the investigating officer's report did not reflect the complainant's letter in exact terms. However, the tribunal decided that the facts and matters which gave rise to the breach were clearly before the standards committee. The tribunal therefore decided it was not a matter beyond the standards committee's jurisdiction.

Example 3

The appeals tribunal made clear in the above case, APE 0403, that the role of the investigating officer is to collect together the evidence and then present this to the standards committee. It

was not, in any sense, the investigating officer's evidence.

It was also part of the investigating officer's role to give their views on whether the evidence substantiated a breach of the Code. This stood as advice to the standards committee to take into account, but which it was not obliged to follow.

Example 4

The original complaint does not fix the scope of the investigation – it is simply the initiating act. The appeals tribunal in the case APE 0401 found that it was legitimate for the investigating officer to ultimately allege a breach of the Code not identified by the complainant.

Example 5

The appeals tribunal in the case above, APE 0401, found that it was also legitimate for an investigating officer to "chaperone" a witness. Where a witness is called by the investigating officer to support a finding in their report of an alleged breach of the Code, there was no obligation on the investigating officer at that stage of the process to adopt an impartial stance.

Example 6

The appeals tribunal advised in the case APE 0399 that a situation might arise where the facts of the case are undisputed and the case is being heard in the absence of the subject member. This is on the basis of papers served on them before the hearing.

examples on procedural matters

Continued ...

In such situations, further evidence should not be introduced to the standards committee without giving the subject member the opportunity to look at the substance of that evidence. The subject member is then able to make a decision about whether to attend the hearing to rebut the evidence or to make written representations about it.

Example 7

The appeals tribunal in the case above, APE 0399, also advised that while standards committees are free to regulate their own procedures, following Standards Board guidance provides a firm procedural foundation for the hearings. Not doing so in this case may have led to a degree of unfairness at the hearing.

Example 8

In APE 0394, the appeals tribunal advised that where an allegation is about a failure to declare a personal interest at a meeting, it is essential that the committee satisfies itself that the member was present at the relevant meeting. This is on the basis of the available evidence, usually in the form of committee minutes. The standards committee should not expect the member to prove that he was not present at the meeting.

Example 9

In the case tribunal APE 0378, the Tribunal noted that Parliament had not provided any limitation period within which a complaint had to be made. Therefore, if an allegation relies on a series of events, it is appropriate for the Tribunal

to look at the individual event as part of that series when considering whether its age makes it unfair or detrimental to the subject member.

In considering unfairness and the detrimental effect in this case, the Tribunal took into account:

- that all the events occurred within two years
- the allegations were supported by written evidence rather than personal recollections
- the events related to breaches of the same paragraph of the Code
- the member had not identified any detriment she had suffered as a result of the age of some of the events

There was therefore no unfairness or detriment in the allegations being dealt with.

Example 10

In APE 0396, the chair at a planning meeting declared a personal interest but not a prejudicial interest, which he also had. The member voted at the meeting and used his casting vote as chair following an equality of votes to object to the planning application. The appeals tribunal upheld the standards committee finding that the use of the casting vote elevated the seriousness of the breach. This was taken into account when the sanction was imposed.

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