



Standards Committee

Date:	Monday, 1 December 2008
Time:	5.30 pm
Venue:	Committee Room 1 - Wallasey Town Hall

Contact Officer: Mike Archbold
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AGENDA

1. DECLARATIONS OF INTEREST

The members of the Committee are asked to consider whether they have a personal or prejudicial interest in connection with any item(s) on this agenda and, if so, to declare it and state the nature of that interest.

2. MINUTES (Pages 1 - 4)

To receive the minutes of the meeting held on 20 September 2008, which were reported to the Council on 3 November.

3. AUDIT COMMISSION - ETHICAL GOVERNANCE DIAGNOSTIC (Pages 5 - 34)

4. CODE OF CONDUCT FOR MEMBERS AND OFFICERS - CONSULTATION (Pages 35 - 74)

5. THE STANDARDS BOARD FOR ENGLAND - CASE REVIEW 2008 (Pages 75 - 88)

The Committee is asked to note and/or comment on the Standards Board's Case Review Digest 2008.

6. THE ADJUDICATION PANEL FOR ENGLAND - GUIDANCE (Pages 89 - 92)

7. DATES FOR MEETINGS

8. ANY OTHER URGENT BUSINESS ACCEPTED BY THE CHAIR

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STANDARDS COMMITTEE

Tuesday, 30 September 2008

Present:

Mr Brian Cummings (Chair)
Mr Ken Harrison (Vice-Chair)

Councillors	C Blakeley	C Meaden
	WJ Davies	L Rowlands
	K Hayes	A Taylor
	AR McLachlan	C Teggin
		P Williams

9 DECLARATIONS OF INTEREST

The members of the Committee were asked to consider whether they had a personal or prejudicial interest in connection with any item on the agenda and, if so, to declare it and to state the nature of such interest. The following declaration was made:

Councillor Blakeley declared a prejudicial interest in the subject of minute 15 by virtue of his knowledge of the matter.

10 MINUTES

The minutes of the previous meeting had been submitted to the Council on 14 July.

Resolved – That the minutes of the meeting held on 30 June be accepted as a correct record.

11 EXEMPT INFORMATION - EXCLUSION OF MEMBERS OF THE PUBLIC

The Committee agreed to vary the order of business and it was therefore –

Resolved - That, under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined by the relevant paragraph of Part I of Schedule 12A (as amended) to that Act.

12 COMPLAINT OF MALADMINISTRATION (MR W)

The Director of Adult Social Services reported in connection with a complaint that had been investigated at Stage 2 of the Complaints Procedure. One of the desired outcomes was for compensation to be paid to Mr W in lieu of services that had not been provided. The complaint had been upheld, but it had been necessary to advise the complainant that compensation could not be offered because Council policy required a recommendation from the Local Government Ombudsman. Following receipt of the Ombudsman's views and subsequent negotiations with the

complainant, a sum of compensation had been suggested, which was acceptable to both.

On behalf of the Director, Phil Gilroy, Principal Manager (Specialist Services), reported that more recently additional staff had been appointed and a new protocol for dealing with the transition of young people into adulthood had been established, which involved all appropriate agencies.

Resolved - That the proposed sum of £5,000 offered as compensation to Mr W be approved.

13 **LOCAL GOVERNMENT OMBUDSMAN'S ANNUAL LETTER AND COMPLAINT MONITORING REPORT**

The Director of Law, H.R. and Asset Management submitted and commented on the Local Government Ombudsman's annual letter, which had been sent to each local authority and set out the number of complaints made to the LGO about each authority in the year 2007/08, the outcomes, how they had been dealt with and response times. Members were reminded of criticism regarding the previous year's average response times, which had led to the Committee's approving an action plan to improve the situation. As a result, the average time that the Council had taken in 2007/08 had been reduced to 26.8 days, which the Ombudsman regarded as a significant improvement on recent years, and she had congratulated the Council on its performance. In the current year, to date, the average time had improved to 18.8 days.

While the Ombudsman had generally been complimentary about the efforts made to deal with complaints, she had highlighted some issues relating to the Council's internal complaints procedures, in particular about children and family services issues. A constructive meeting had been held about the matter and improvements were expected. It was noted that the Children's Services and Lifelong Learning Overview and Scrutiny Committee received regular monitoring reports on the handling of complaints.

The Director also reported on the proposed transfer of the processing of Ombudsman's complaints to the Head of Revenues and Benefits and Customer Services within the Finance Department, because it was felt to be more appropriately placed within the customer services responsibilities of that department. The proposed handover date would be 1 November 2008. There would be regular liaison meetings during the handover period to ensure that the changes did not affect the performance, and the Standards Committee would continue to receive regular performance monitoring reports. At the current time it was not thought necessary to transfer any staffing resources, though that issue would be kept under review.

Resolved - That

(1) the report be noted and the officers be congratulated on the improvement in dealing with Ombudsman's complaints.

(2) members be provided with further information regarding the nature of those complaints classified as "other" and a copy of the Ombudsman's explanatory note.

14 **SETTLEMENT OF COMPLAINTS - AMENDMENT TO THE SCHEME OF DELEGATION**

The Director of Law, H.R. and Asset Management reported that the current scheme of delegation provided for the amounts that could be paid as compensation to settle complaints. It was felt that there were practical difficulties with the current scheme which inhibited the ability of the Council to respond effectively to complaints and resolve them at the earliest possible stage. He therefore sought the Committee's endorsement of proposed amendments to the scheme, which would then be referred to the Cabinet and the Council for approval.

Following a discussion as to what might be the appropriate upper limit of compensation that could be agreed without recourse to the Committee, on a motion by Councillor McLachlan, seconded by Councillor Blakeley, it was –

Resolved – That

(1) the Officers' Scheme of Delegation be amended to allow them to

- (a) settle complaints of maladministration, after consultation with the Director of Finance and the Director of Law, H.R. and Asset Management, by making compensation payments up to a maximum of £1,000 in any one case. The terms of such settlements shall subsequently be reported to the Standards Committee;**
- (b) settle complaints of maladministration, after consultation with the Chair of the Standards Committee, the Director of Finance and the Director of Law, H.R. and Asset Management, by making compensation payments up to a maximum of £5,000 in any one case. The terms of such settlements shall subsequently be reported to the Standards Committee (and cases over £5,000 would be dealt with by the Standards Committee, in accordance with Article 9 in Part 2 of the Constitution);**

(2) the terms of reference of this Committee be amended to allow it to approve the payment of compensation involving sums in excess of £5,000 to settle complaints of maladministration.

15 **INDEPENDENT MEMBER - APPOINTMENT ARRANGEMENTS**

The Director of Law, HR and Asset Management requested the Committee to consider arrangements for interviewing applicants for the impending vacancy of independent member (Mr Ken Jones's term of office would expire on 31 October). The Committee discussed the issue of the percentage of independent members in relation to the size of the committee, which currently stood at the minimum 25% of the total membership.

Resolved - That

(1) following the closing date of 3 October, a date be arranged for the Chair (or Vice-Chair) and the three party spokespersons to interview applicants, and they be authorised to submit their recommendation direct to the Council meeting on 3 November;

(2) if the Panel considers it appropriate to do so, having interviewed all of the candidates, the Panel be authorised to submit two nominations to the Council with the request that the overall membership of this Committee be increased accordingly.

16 **EXEMPT INFORMATION - EXCLUSION OF MEMBERS OF THE PUBLIC**

Resolved - That, under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting during consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as defined by the relevant paragraph of Part I of Schedule 12A (as amended) to that Act.

17 **STANDARDS BOARD DECISION NOTICE**

The Director of Law, H.R. and Asset Management reported on a complaint against a councillor that had been considered by the Standards Board for England. The Board's decision had been that the complaint should not be referred for investigation.

Resolved - That the decision be noted.

18 **MEMBERS' REGISTER OF GIFTS AND HOSPITALITY**

The Chair agreed to consideration of this matter, having accepted the need for clarification.

Councillor Blakeley referred to a potential conflict over the registering of gifts and hospitality, in that he had received differing advice as to with which authority they should be registered. He asked that the matter be clarified and also suggested that the Council might adopt the form currently in use within the Merseyside Passenger Transport Authority, which he felt would be helpful to all members. The Committee noted that it included a requirement to register offers of gifts and hospitality, i.e. even when they were not accepted.

The Acting Head of Legal and Member Services reported that the issue had been discussed among Merseyside's District Secretaries and Monitoring Officers, who were considering the adoption of a standard protocol. It was also hoped that the Council's new Modern.gov computer system, once fully operational, would make the process of registering members' interests and gifts and hospitality easier.

Resolved - That the Committee receive a further report on the various issues relating to the registering of gifts and hospitality.

WIRRAL COUNCIL

STANDARDS COMMITTEE - 1 DECEMBER 2008

REPORT OF THE DIRECTOR OF LAW, H.R. AND ASSET MANAGEMENT

ETHICAL GOVERNANCE DIAGNOSTIC

1. Executive Summary

- 1.1 The purpose of this report is to bring to the Committee's attention the Audit Commission's Ethical Governance Diagnostic for a review of compliance with ethical issues within the Council. The document is attached as Appendix 1.

2. Background

- 2.1 The Audit Commission's proposed review will be based around the requirements of the Local Government Act 2000 (Part 3: Conduct of local government members and employees) and the Local Government and Public Involvement in Health Act 2007 (in particular, Part 10: Ethical Standards). The Audit Commission points out in the draft document that one of the common aspects of failures of governance is not so much the absence of frameworks, controls and arrangements as the absence of appropriate behaviours and values amongst members and officers. The proposed review will look at compliance with statutory requirements and also at behaviour, culture and values.
- 2.2 Paragraphs 13 to 15 of the document set out the scope and objectives of the review, one of which is to see if "the Council is ensuring that the Standards Committee has access to the right information and support to enable it to do its job properly". It is also the intention to examine various documents relating to the work of this Committee and to interview the Chair and members of it.
- 2.3 The document also states that "to be of the most benefit to the Council, it is vital that this review has the commitment and support of senior officers and all political parties. To this end, we plan to agree the brief with the Cabinet, together with the opposition party". Any comments that this Committee wishes to make can be fed through to the Cabinet.

3. Financial and Staffing Implications

- 3.1 There are no financial or staffing implications arising directly out of this report.

4. Other Implications

- 4.1 There are no implications arising directly out of this report in terms of equal opportunities, ethnic minorities, the elderly or the disabled; nor are there any implications relating to community safety, human rights, Local Agenda 21, planning or social inclusion.

5. Local Member Support

- 5.1 The report has no implications for individual wards.

6. Background Papers

6.1 No background papers have been used in the preparation of this report.

7. Decision Required

7.1 The Committee is asked to note the report and to request the officers to prepare an action plan for the review.

Bill Norman

Director of Law, H.R. and Asset Management

21 November 2008

Ethical Governance Diagnostic

Wirral Borough Council

Audit 2007/08

Date

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The Statement of Responsibilities of Auditors and Audited Bodies issued by the Audit Commission explains the respective responsibilities of auditors and of the audited body. Reports prepared by appointed auditors are addressed to non-executive directors/members or officers. They are prepared for the sole use of the audited body. Auditors accept no responsibility to:

- any director/member or officer in their individual capacity; or
- any third party.

Introduction

- 1 Confidence in local democracy is a cornerstone of our way of life. It can only be achieved when elected and co-opted members of local authorities are seen to live up to the high standards the public has a right to expect from them.
- 2 In recent years there has been an increased emphasis on standards and conduct in public life. The findings of the Committee on Standards in Public Life, the Local Government Act 2000 and the introduction of the Standards Board for England (SBE) are all factors in the current weighting being given to the need for strong ethical governance in local councils. This was also reinforced by the Chief Executive of the Standards Board for England in his November 2006 letter to local authority Chief Executives where he stressed the roles of Chief Executives and leading members in influencing organisational culture and supporting the ethical environment.
- 3 High ethical standards are the cornerstone of good governance. They are an integral part of good corporate governance arrangements and can lead to increased confidence in local democracy and better public services. Setting high ethical standards is an important building block for councils in developing their community leadership role and improving services to the community. Councils are also becoming involved in increasingly complex partnerships and poor ethical standards may adversely affect these arrangements.
- 4 Ethical governance is an area of great interest to the national and local press, particularly when things go wrong. Local authorities and individual members face a number of risks, including investigation for alleged breaches of the code of conduct, sometimes leading to the disqualification of members, loss of confidence and trust in individual members, councils and local democracy and poor decision-making.
- 5 On average, one member a week was removed from office in 2006. Other sanctions have included formal censure and suspension from using council facilities. Reasons included because of bullying behaviour, misuse of council resources, bringing the council into disrepute and using the position as a member for personal gain. The high number of disqualifications has now reduced.
- 6 One of the common aspects of governance failures is not the absence of frameworks, controls and arrangements but the absence of appropriate behaviours and values amongst members and officers. This audit therefore looks at your compliance with statutory requirements and also at behaviour, culture and values.

What do we mean by ethical governance?

- 7 We use the term 'ethics' as defined by the House of Commons: Public Administration Select Committee: Ethics and standards - the regulation of conduct in public life, 2007.

8 The committee defined 'ethics' to mean:

“the qualities of good governance, such as integrity, legitimacy, accountability, and adherence to a commonly understood standard of behaviour”.

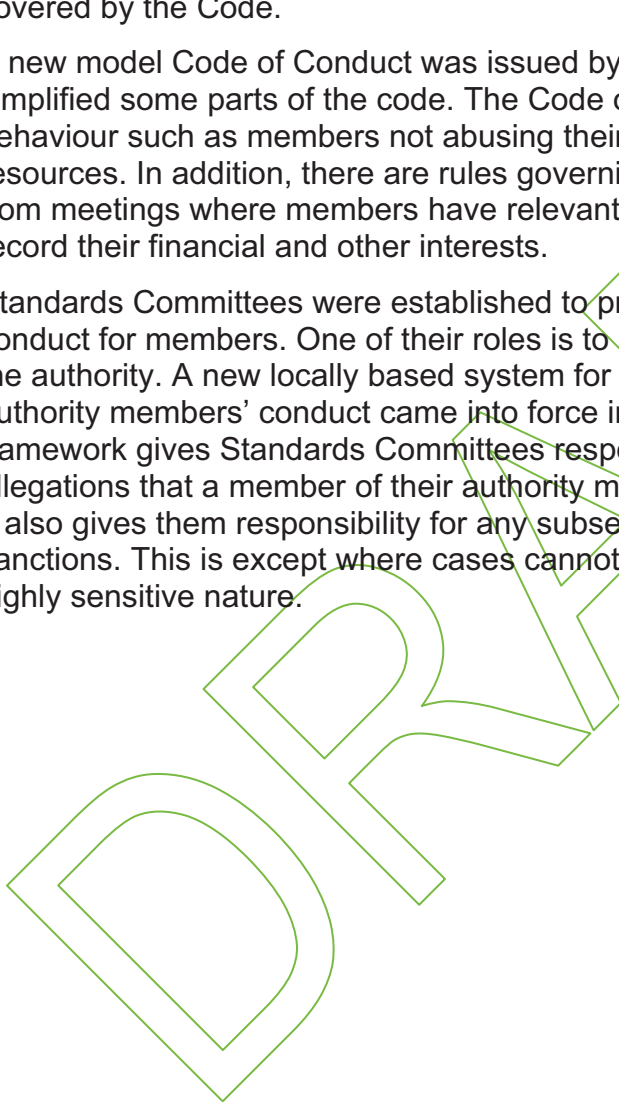
9 This definition is based on the work of the Committee on Standards in Public and its Principles of Public Life, often known as the Nolan Principles, after Lord Nolan, the chair of the committee at that time:

- Selflessness
- Integrity
- Objectivity
- Accountability
- Openness
- Honesty
- Leadership.

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Background

- 10 This work is based on the requirements of the Local Government Act, 2000 Part III and the Local Government and Public Involvement in Health Act 2007. Every local authority is required to adopt a members' Code of Conduct that sets out the rules governing the behaviour of its members. All elected, co-opted and independent members of local authorities, including parish councils, fire, police and national park authorities, are covered by the Code.
- 11 A new model Code of Conduct was issued by the government in April 2007. This simplified some parts of the code. The Code of Conduct covers areas of individual behaviour such as members not abusing their position or not misusing their authority's resources. In addition, there are rules governing disclosure of interest and withdrawal from meetings where members have relevant interests. Members are also required to record their financial and other interests.
- 12 Standards Committees were established to promote and maintain high standards of conduct for members. One of their roles is to create a sense of 'ethical well-being' in the authority. A new locally based system for dealing with complaints about local authority members' conduct came into force in May 2008. The new standards framework gives Standards Committees responsibility for the initial assessment of all allegations that a member of their authority may have breached the Code of Conduct. It also gives them responsibility for any subsequent investigations, decisions and sanctions. This is except where cases cannot be handled locally because of their highly sensitive nature.



Scope and objectives

13 The aim of this work is to assess how far:

- the Council is complying with Part III of the Local Government Act 2000 and the relevant sections of the Local Government and Public Involvement in Health Act 2007;
- the Council is ensuring that the Standards Committee had access to the right information and support to enable it to do its job properly;
- members and officers understand and are aware of ethical issues;
- members are abiding by the Code of Conduct; and
- members and officers have training needs in this area.

14 This work covers four areas:

- Balancing rules and trust - how far the Council is supporting the genuine motivation of people while ensuring that those who do breach the rules are challenged.
- Independent overview - how far the Council is monitoring, developing and promoting the Council's approach to the ethical agenda and how far this is delivering improvement.
- Leadership - how far the Council is encouraging good conduct in the Council, including in relation to the equalities and diversity agenda.
- Transparency - how far the Council is ensuring transparency in the way it carries out its business.

15 As a result of this work councillors and officers should:

- be more aware of the progress that the Council has made in delivering the ethical agenda;
- have a better understanding of the ethical health of the Council; and
- have a better understanding of what, if any, further action is needed to meet the desired standards.

To be of the most benefit to the Council, it is vital that this review has the commitment and support of senior officers and all political parties. To this end, we plan to agree the brief with Cabinet and with the opposition party.

Audit approach

- 16 The audit comprises three parts, the first two of which are covered by our audit programme:
- Part (1) of the work is an electronic survey of all members and senior staff in the organisation. See Appendix 4 for the questions included in the survey. The survey is confidential and respondents will not be identified. All results will be fed back in an anonymous format and will not be attributed to individuals. The survey uses SNAP – an online survey tool. It runs on an Audit Commission server and so the Council doesn't need to buy or have any software loaded. We give the client an internet address to allow them to access the survey - see Appendix 3 for an example standard letter to be sent out. Staff or members at the Council site who are to complete the survey will need desktop access to the internet. We also ask the Monitoring Officer to complete a set of questions - see appendix 5. In order to ensure that we can compare your position with other councils that have benefited from this audit we do not plan to change any of the questions;
 - Part (2) is a detailed assessment of how well your organisation's ethical governance arrangements are working. - including a document review (see appendix 1), interviews and focus groups - see appendix 2 for the list of possible meetings; and
 - Part (3) is workshops which can follow from the detailed tool and survey. They are designed to pick up on issues raised in the previous two parts of the work and to move the organisation to the next stage of its development. The workshops can be delivered either to members or to senior staff or to members and staff together. They use scenarios and ask participants to discuss the issues that the scenarios present – both in respect of whether the Local Government Act Part III has been breached and what should be done to improve the arrangements and understanding. We will discuss the appropriate format for any workshops and which scenarios to introduce with the Council.
- 17 Throughout the audit we will maintain confidentiality and focus on issues and not individual people.

Reporting and timescales

- 18 We will provide the Council with a summary report, including an analysis of the survey, plus recommendations for improvement. The report will be based on our findings following the electronic survey of members and senior officers, the document review, member and officer interviews and focus groups with staff.
- 19 The actual nature of further end product(s) will be agreed with the Council once the work is nearer completion. These could also include workshops to address our findings. Further work is not at the moment included in our audit and inspection plans but will need to be the subject of discussion to agree whether we are required to address it as part of our risk based audit or as further work under our Advice and Assistance powers.

Task	Target date for completion
Set up meeting to finalise brief	November 2008
Survey	December 2008
Document review, interviews and focus groups	January/February 2009
Client feedback	March 2009
Workshops	To be agreed

Audit personnel and key contacts

Audit Commission staff involved in the work will be.

Liz Temple-Murray, Audit Manager
l-temple-murray@audit-commission.gov.uk
Tel 0151 666 3483

David Brown, Performance Specialist
da-brown@audit-commission.gov.uk
Tel 0844 798 7019

The contacts from the authority will be.

Bill Norman, Director HR, Law and Asset Management (Lead Director)
billnorman@wirral.gov.uk
Tel 0151 691 8497

Simon Goacher, Head of Law (key contact)
simongoacher@wirral.gov.uk
Tel 0151 691 8498



Appendix 1: Document request

Copies of the following documents will be needed before we commence the audit

Please indicate whether we can access any documents via the Council's website

- Council constitution
- Members' code of conduct
- Officers' code of conduct
- Standards Committee terms of reference
- Standards Committee agendas, minutes, annual report and supporting papers
- Schedule of proposed activities for the following year/annual plan
- Appointment of independent members to Standards Committees - details
- And any related job descriptions, person specifications etc
- Standards, protocols and procedures for handling investigations
- Member training/guidance/information in this area - details
- And details of attendance including evaluations
- Work undertaken by external bodies with the Standards Committee - details
- Complaints to the Standards Committee - details
- And details of any outcomes
- Resident and staff surveys – full results
- Any other relevant documentation

Appendix 2: Interviews/focus groups

20 We ask to see the following people

Possible interviews	Possible focus groups
Leader of the Council	Democratic services staff
Deputy Leader of the Council	Senior managers
Leader of the opposition	Non-executive members of each of the parties
Whip of each party	
Chair of the Standards Committee	Partners [to be agreed]
Standards Committee - a member representative from each of the parties	Users [to be agreed]
Chair of Scrutiny Committee	
Independent member	
Chief Executive	
Monitoring Officer	
S151 Officer	
Directors of departments	



Appendix 3: Audit Part (1) SNAP survey - draft letter

Wirral Council

Ethical standards self-assessment survey

[Sample letter - in our experience, the response is best when this letter is sent out with a covering letter by the Chief Executive]

To Members and officers

Setting high ethical standards

The Audit Commission is working with Wirral Council to assess its arrangements for ensuring and promoting a positive ethical environment. **I am writing to invite you to complete an on-line survey which is the starting point for this work.** The survey asks members and officers for their views on the ethical governance arrangements in your council and explores awareness of Part III of the Local Government Act 2000 - which for example, introduced the members' code of conduct and standards committees.

High ethical standards are of benefit to the Council. They are an integral part of strong corporate governance; they can lead to increased confidence in local democracy and local services and can help the authority to attain high corporate assessment and use of resources ratings. Ethical governance is also included in the Audit Commission's Comprehensive Performance Assessment and Use of Resources work. Findings from our work will be used to identify any improvements that can be made in your council.

The survey will take approximately ten minutes to complete. Please click on (link to be provided) to access the survey. Please complete the survey by (date to be inserted). For technical reasons we regret the survey cannot be accessed directly from a 'Blackberry'.

We will share anonymised survey results with your council. Your individual response will be confidential to the AC and we will not identify your responses to your organisation. Under the Data Protection Act, we have a legal duty to protect any information collected from audited and inspected bodies. Only the minimum appropriate personal data is requested and held, and it is only kept for so long as the purpose requires. We will not provide any personal information obtained by us to other companies or individuals without people's consent unless required to by law.

Should you have any queries or concerns about this work please do contact me at da-brown@audit-commission.gov.uk (07771 943375).

Appendix 3: Audit Part (1) SNAP survey - draft letter

Thank you for taking the time to complete the survey.

Yours sincerely

David Brown
Performance Specialist

Please complete the survey on line by [date] or send your completed paper copy in the enclosed envelope to David Brown at:

Audit Commission
Aspinall Close
Middlebrook
Horwich
Bolton
BL6 6QQ

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Appendix 4 – Member and officer survey questions

- Members abide by the members' code of conduct
- Members make allegations of member misconduct appropriately
- Members make allegations of member misconduct without fear of reprisal
- Officers make allegations of member misconduct appropriately
- I can make an allegation of member misconduct without fear of reprisal
- I can make an allegation of officer misconduct without fear of reprisal
- Members use the Council's resources for party political purposes
- Members perform their duties with honesty, integrity, impartiality and objectivity
- Members listen to the advice of officers
- Members uphold the impartiality of officers
- Officers use the Council's resources appropriately
- Officers perform their duties with honesty, integrity, impartiality and objectivity
- Members trust each other
- Officers trust each other
- Members and officers trust each other
- Bullying by members is not tolerated in the Council
- Bullying by officers is not tolerated in the Council
- Members work well together to achieve the Council's common goals
- Members and officers work well together to achieve the Council's common goals
- Officers work well together to achieve the Council's common goals
- The Council works well with voluntary and community groups to achieve the area's common goals
- The Council works well with statutory partners to achieve the area's common goals
- Appropriate confidences are kept by members
- Appropriate confidences are kept by officers
- I have agreed to abide by my Council's member code of conduct
- This Council has a Standards Committee

Appendix 4 – Member and officer survey questions

- The work of the Standards Committee adds value to the Council
- I understand the role of the Standards Committee
- The Standards Committee is making a positive difference to the way people outside the Council view the organisation
- The Standards Committee is impartial
- Members are provided with appropriate advice on ethics and standards
- Officers are provided with appropriate advice on ethics and standards
- The Standards Committee or monitoring officer monitors member behaviour against the members' code of conduct
- Guidance on ethics and conduct is included in the induction of new members
- Training on ethics and conduct issues is mandatory for members
- Guidance on ethics and conduct is included in the induction of officers
- The organisations' values are communicated to members (via for example, training, meetings, news letters, the local media and the Council's website)
- The organisations' values are communicated to officers
- The organisations' values are communicated to local communities
- The organisations' values are communicated to local partnerships
- The importance of high ethical standards is communicated to members (via for example, training, meetings, newsletters, the local media and the Council website)
- The importance of high ethical standards is communicated to officers
- The importance of high ethical standards is communicated to local communities
- The importance of high ethical standards is communicated to local partnerships
- The Council seeks to meet the needs of its diverse communities
- The Council seeks to attract officers from diverse backgrounds
- The Council ensures that staff are appropriately skilled to meet the needs of its diverse communities
- Members are a focus for positive change
- Members treat users of Council services fairly
- Members treat other members fairly
- Members treat officers fairly
- Officers treat users of Council services fairly
- Officers treat members fairly
- Officers treat other officers fairly

Appendix 4 – Member and officer survey questions

- Appropriate guidance is provided for members on equalities and human rights issues
- Appropriate guidance is provided for officers on equalities and human rights issues
- The Leader of the Council is a positive role model in terms of ethical behaviour
- The Leader of the Council promotes the importance of the ethical agenda
- The Chief Executive is a positive role model in terms of ethical behaviour
- The Chief Executive promotes the importance of the ethical agenda
- The Council's leadership values the role of the Monitoring Officer
- The Monitoring Officer is actively supported by the Chief Executive
- The Council's Monitoring Officer is able to carry out her/his role appropriately
- The Monitoring Officer promotes the ethical agenda
- The Council's approach to promoting high ethical standards is encouraging appropriate behaviour across the Council
- The Council's approach to promoting high ethical standards is helping to build public confidence in the Council
- The public can access the members' code of conduct
- The public can access the officers' code of conduct
- The public can access documents relating to the standards committee (for example, agendas, minutes, background papers)
- Council policies on the use of its resources by members (for example use of telephone, IT etc) are clear
- Council policies on the use of its resources by officers (for example use of telephone, IT etc) are clear
- Communication between members is open
- Communication between members is constructive
- Communication between members and officers is open
- Communication between members and officers is constructive
- Communication between officers is open
- Communication between officers is constructive
- There is a culture in the Council which allows members to challenge Council decisions without fear of reprisal
- There is a culture in the Council which allows officers to challenge member recommendations without fear of reprisal
- There is a culture in the Council which allows partners to challenge Council decisions without fear of reprisal

Appendix 4 – Member and officer survey questions

- There is a culture in the Council which allows the public to challenge decisions without fear of reprisal
- Members respond positively to constructive external criticism about the Council
- Officers respond positively to constructive external criticism about the Council
- The public can access the Council's complaints policy
- The Council's complaints system is clear
- The Council has arrangements for dealing with complaints from the public about services provided in partnership
- Members take complaints from the public seriously
- Officers take complaints from the public seriously
- The Council's whistle blowing policy is clear
- The public can access the whistle blowing policy
- The Council's whistle blowing policy is used appropriately
- The Council's whistle blowing policy is used without fear of reprisal
- The public can access the register of member interests
- The guidelines for members on their personal conduct are clear
- The guidelines for officers on their personal conduct are clear
- Members feel able to challenge other members' inappropriate behaviour
- Members feel able challenge officers' inappropriate behaviour
- Officers feel able to challenge members' inappropriate behaviour
- Officers feel able to challenge other officers' inappropriate behaviour
- The process to report inappropriate member behaviour is clear
- The process to report inappropriate officer behaviour is clear
- Members who behave inappropriately are suitably dealt with
- Officers who behave inappropriately are suitably dealt with
- The Council learns from other councils to ensure that its ethical arrangements are appropriate

Appendix 5: Audit Part (1)

Monitoring Officer's questionnaire

ETHICAL GOVERNANCE TOOL - ISSUES	ANSWERS
<p>1. Balancing rules and trust (MO's questions)</p> <p>Supporting the genuine motivation of people whilst continuing to ensure that those who do breach the rules are discouraged is a key issue.</p>	
1.1	<p>Has the member code of conduct been tailored to local circumstances?</p> <p>If yes, how has the model code been changed?</p> <p>Has the Standards Board for England been informed of any changes to the model code?</p>
1.2	<p>How far has the Council integrated the requirements of the code into its policies or schemes, including obligations under the Anti-Discrimination, Human Rights and the Freedom of Information Acts?</p>
1.3	<p>Is there any evidence that members inappropriately use Council resources for political or other purposes?</p>
1.4	<p>Is there any evidence that members ever do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority?</p>
1.5	<p>How far do members take officer advice into consideration when they</p>

Appendix 4 – Member and officer survey questions

ETHICAL GOVERNANCE TOOL - ISSUES	ANSWERS
<p>1. Balancing rules and trust (MO's questions)</p> <p>Supporting the genuine motivation of people whilst continuing to ensure that those who do breach the rules are discouraged is a key issue.</p>	
make decisions?	
1.6	<p>Does the Council have an anti-bullying policy? How is information about this policy disseminated?</p>
1.7	<p>Is there any evidence of bullying by members of other members or of officers, or bullying by officers of members?</p>
1.8	<p>What is the Council's policy on the use of confidential information? Provide external elink if appropriate. Is there any evidence that councillor ever break confidences?</p>
1.9	<p>How many allegations of breaches of the Code have you received for investigation from the authority's standards committee in the last year?</p> <p>How many allegations of breaches of the Code did you received for investigation from the Standards Board during the previous year?</p> <p>Of the cases received in the last year how many:</p> <ul style="list-style-type: none"> ● are outstanding; ● have been investigated and a report completed concluding that there has been a failure to comply with the Code of Conduct; ● have been investigated and a report completed concluding that there has not been a failure to comply with the Code of

Appendix 4 – Member and officer survey questions

	<p>Conduct;</p> <ul style="list-style-type: none">• have been referred to the Standards Board for England for investigation by an ethical standards officer? <p>What is the nature of the behaviours complained of?</p>	
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Appendix 4 – Member and officer survey questions

ISSUES	ANSWERS
<p>2. Independent overview (MO's questions)</p> <p>Monitoring, developing and promoting the Council's approach to the ethical agenda delivers improvement in this area.</p>	
<p>2.1</p>	<p>What is the membership of the Standards Committee?</p> <p>How many members are there overall? How many are councillors (which parties), independent members and parish or town councillors?</p>
<p>2.2</p>	<p>How were independent members appointed or selected?</p> <p>How far were the Council's recruitment procedures for senior staff adhered to?</p> <p>In some councils most independent members come from the same professional background. How far does this apply in your Council?</p>
<p>2.3</p>	<p>What training, guidance or support have independent members of the Standards Committee received to familiarise themselves with local government and the Council?</p>
<p>2.4</p>	<p>What are the terms of reference of the Standards Committee?</p> <p>Do the terms of reference include:</p> <ul style="list-style-type: none"> ● advising on adopting a local code which sets out the standards of conduct expected from members? ● promoting and maintaining high standards of conduct within the Council through assistance, advice and training? ● promoting the requirements of the code of conduct outside the Council and helping the public, external stakeholders and partners to understand the required standards of behaviour of

Appendix 4 – Member and officer survey questions

ISSUES	ANSWERS
<p>2. Independent overview (MO's questions)</p> <p>Monitoring, developing and promoting the Council's approach to the ethical agenda delivers improvement in this area.</p>	
<p>members?</p> <ul style="list-style-type: none"> • monitoring the operation of the members' code of conduct? 	
<p>2.5 What does the Standards Committee do to promote the requirements of the code of conduct inside and outside the Council and help the public, external stakeholders and partners to understand the required standards of member behaviour?</p>	
<p>2.6 Has the Standards Committee undertaken an assessment of the standards of conduct in the Council? If so, what were the key findings? What has changed because of the assessment?</p>	
<p>2.7 How does the Standards Committee use findings, including from the allegations it receives, the authority's own investigations, the Standards Board for England, internal and external audit, the local government ombudsman, complaints, whistle-blowing and so on to plan its work?</p>	
<p>2.8 What does the Standards Committee do to publicise guidance produced by the Standards Board for England</p>	
<p>What does the Standards Committee do to publish case rulings?</p>	
<p>2.9 Has the Standards Committee undertaken an assessment of the impact of its work inside the Council? And outside the Council? If so, what were the key findings? What has changed because of the assessments?</p>	

Appendix 4 – Member and officer survey questions

2.10	<p>How regularly are the following reviewed, including terms of reference:</p> <ul style="list-style-type: none"> ● operation of the constitution; ● members' code of conduct; ● officers' code of conduct; ● member/officer protocol ● register of interests; ● the Standards Committee; and ● other ethical protocols. <p>What changes have been made because of these reviews?</p>	
2.11	<p>What training, guidance and information have members received on the members' code of conduct? In your view is the training adequate? What percentage of the target group attended the last training?</p>	
2.12	<p>What training, guidance and information have officers received on the code? In your view is the training adequate?</p>	
2.13	<p>Does the Standards Committee have proper processes for: receiving and assessing allegations, carrying out reviews, holding determination hearings?</p> <p>Has the Council assessed the potential risks in this whole process and how it will mitigate them?</p>	

3. Leadership (MO's questions) Encouraging good conduct in the Council is the responsibility of the Council's leadership and of all members and officers.		
3.1	What evidence do you have that members and officers understand their respective roles?	
3.2	How far do members involve themselves in operational issues?	
3.3	What guidance is provided for members and officers on equality laws, human rights and freedom of information legislation?	
3.4	Do you have easy access to the Chief Executive on ethical and other relevant issues?	
3.5	Does the Standards Committee have easy access to the Chief Executive on ethical and other relevant issues?	
3.6	What role does the Chief Executive have in ensuring that the code of conduct is observed and that good ethical behaviour is promoted?	
3.7	How do you ensure your role is valued by the Council's leadership?	
3.8	Are you part of the senior management team?	
3.9	What advice, support and information do you provide to the Standards Committee?	
	What percentage of Standards Committee meetings have you attended in the last year?	
3.10	How is the importance of high ethical standards communicated to member and officers and to the local community by the Council?	

Appendix 4 – Member and officer survey questions

4. Transparency (MO's questions) Ensuring transparency in the way the Council carries out its business is a key component of ethical governance.		
4.1	How is information on the Council's access to information policy disseminated to members, officers and the public?	
4.2	How easily can the public find and then access Standards Committee documents: <ul style="list-style-type: none"> ● terms of reference; ● meeting schedule; ● agendas/minutes; ● reports/papers/plans; and ● background papers ● case findings 	
4.3	Where are copies of the members' code of conduct available for inspection by the public? When and where did the Council publicise that the 2007 code has been adopted and that it is available for inspection?	
4.4	Does the Standards Committee have a publicly available annual/forward plan based on the ethical issues facing the Council?	
4.5	Does the Standards Committee report at least once a year to the full Council on the ethical agenda and the work of the Standards Committee?	
4.6	Is the council responding to the Standards Board for England's quarterly and annual requests for information in a timely and appropriate manner?	
4.7	What are the Council's protocols for member use of: <ul style="list-style-type: none"> ● Council premises; ● information technology (including 	

<p>4. Transparency (MO's questions)</p> <p>Ensuring transparency in the way the Council carries out its business is a key component of ethical governance.</p>		
	<p>the use of equipment at home);</p> <ul style="list-style-type: none"> ● telephone and fax; ● photocopying; ● stationery and headed writing paper; ● postage; ● authority transport; and ● allowances and expenses. 	
4.7	How are member declarations of interest recorded and adherence monitored?	
4.9	How does the Council help members understand the difference between personal and prejudicial interests?	
4.10	<p>How is the register of interests made open to public scrutiny?</p> <p>How is the register of interests monitored and kept up to date?</p> <p>Does the register of interests require all members, including co-opted and appointed members on panels and committees, to record all the required information?</p>	
4.11	<p>How does the Council help members of overview and scrutiny and other Council committees and panels to understand this issue?</p> <p>How does the Council make it clear to members that a dispensation can be sought, allowing them to take part in meetings where they have a prejudicial interest?</p> <p>Have there ever been any allegations of impropriety with regard to the declarations of interests? If so please explain.</p>	
4.12	How are member interests declared and logged at meetings?	
4.13	How far does the Council listen to and	

Appendix 4 – Member and officer survey questions

4. Transparency (MO's questions) Ensuring transparency in the way the Council carries out its business is a key component of ethical governance.	
	learn from constructive challenge, either internally or externally, from the public or from official bodies?
4.14	<p>How easily can the public find and then access the Council's complaints/whistle blowing policies?</p> <p>How is information about these policies disseminated?</p> <p>How effective are they at addressing the ethical governance issues that arise?</p> <p>How far do whistle blowers/complainants have the protection of the Chief Executive?</p>
4.15	How do you ensure that members comply with the code of conduct?
4.16	What procedures are there for the Chief Executive to intervene verbally or in writing if ethical issues arise in the Council?
4.17	What procedures are there for the Monitoring Officer to intervene verbally or in writing if ethical issues arise in the Council?

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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

Paul Rowsell



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

A consultation



www.communities.gov.uk
community, opportunity, prosperity

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

A consultation

October 2008

Department for Communities and Local Government: London

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Eland House
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Website: www.communities.gov.uk

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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 a 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 considered 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) 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
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Bressenden Place
London
SW1E 5DU

email: consultationcoordinator@communities.gsi.gov.uk

Agenda Item 5



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30 October 2008

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Dear Mr Goacher

Case Review: 2008 Digest

I am pleased to be able to send you a copy of the *Case Review: 2008 Digest*. This is a short publication that provides new information or cases that we think you may find helpful.

This digest acts as an accompaniment to last year's *Case Review 2007*. We are not updating and reprinting last year's Case Review due to the limited extent of the changes. Instead we have included particular examples that we find appropriate, and dealt only with those paragraphs of the Code where there is new or useful information.

The final section of the document is called **Examples on procedural matters**. This new feature consists of case examples that do not necessarily fit under particular paragraphs of the Code. We hope you find this useful.

You can download a copy of the *Case Review 2007* free from our website www.standardsboard.gov.uk. Hard copies were sent to monitoring officers last year – if you need a replacement copy please contact us on publications@standardsboard.gov.uk or call **0161 817 5300** and we will send one to you free of charge. Additional copies may be purchased at a cost of £20 each.

I hope that you find this publication interesting and informative.

If you have any further queries, please call our enquiries line on 0845 078 8181 or email enquiries@standardsboard.gov.uk.

Yours sincerely

Glenys Stacey
Chief Executive

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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.

Contact the Standards Board

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Agenda Item 6

From: Karren Carter [mailto:Karren.Carter@adjudicationpanel.co.uk]
Sent: 07 November 2008 15:40
To: Sharon Penn
Subject: Regulation 17, Standards Committee (England) Regulations 2008

Guidance on references to the Adjudication Panel by a Standards Committee (Regulation 17, Standards Committee (England) Regulations 2008)

As you may be aware, recent changes have been made to the legislation that deals with allegations about the conduct of councillors. Local authority standards committees became responsible for receiving complaints about member conduct and deciding what to do with them. One option available to a standards committee after considering an investigating officer's report is to refer the matter to the Adjudication Panel for England for determination by a tribunal.

The President of the Adjudication Panel has issued guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from a standards committee. A copy of that guidance is attached to this email for your information and I would be most grateful if it could be circulated to your standards committee members as well.

If you have any queries or questions about the content of the President's guidance please email enquiries@adjudicationpanel.co.uk or telephone 01423 538783. Further copies of the guidance, as well as other information about the procedures of the Adjudication Panel tribunals, can be downloaded from the 'Guidance and Procedures' section on our website www.adjudicationpanel.co.uk.

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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.