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## Legal & Human Resources

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4th December 2008

Dear Mr. Holden,

### **RESPONSE TO MODEL CODE CONSULTATION**

I refer to the Consultation Paper on codes of conduct for local authority members and employees.

#### Member Code

The Council's Standards Committee considered Chapter 2 of the Consultation Paper at its meeting on the 4th December 2008, and its response is as follows.

As a general point, the Committee noted that it was intended that any changes to the Code would come into effect in line with the local government elections in 2009. As the actual text of the proposed amended and re-formatted Code does not form part of the current consultation, the Committee would like to request that there should be a realistic timetable for early consultation on the actual text.

In response to question 1 of the Consultation Paper, the Committee agreed that some conduct in private life can reflect upon a member's role as such, and that the Code of Conduct should therefore apply to some conduct in a non-official capacity.

In considering question 2, the Committee was mindful that fixed penalties, simple cautions, conditional cautions and "binding over" may be used for some quite serious offences to which there might be a general perception that the Code of Conduct should be capable of applying. The Committee felt that it would be preferable for the definition of "criminal offence" to be wide enough to include offences that have resulted in conviction, caution, fixed penalty or binding over. In the event of a complaint, the Assessment Sub-Committee would then be able to take a view on the appropriate action, if any, taking account of the relative seriousness of the matter.

The Committee supported the definition of “official capacity” set out in the Consultation Paper (question 3), and agreed that the Code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK (question 4).

In response to question 5, the Committee agreed that an ethical investigation should not proceed until the criminal process has been completed, but noted that if the breach arises from a criminal offence, and this is defined by reference to conviction, the breach, and therefore the complaint, should not generally arise until after the criminal process has been completed.

The Committee considered the proposed amendment referred to in question 6, and supported all the proposed amendments to paragraphs 12(2), 8(1)(a), and 10(2) of the Code. In particular the Committee would welcome an amendment to paragraph 8(1)(a)(viii) to make it clear that the requirement is to register details of the gift or hospitality and its value, and the identity of the donor. With regard to this paragraph also, the Committee felt that the threshold of £25 is too low, and that it should be increased to an amount that might be perceived as influencing a member’s decision on a matter, perhaps £100.

A further drafting amendment that the Committee considered would be helpful is to paragraph 11, which appears to preclude Cabinet members from attending Overview and Scrutiny Committee meetings to answer questions about executive decisions they have made. Whilst the Standards Board for England has issued advice that the statutory power of Overview and Scrutiny to require the attendance of a member overrides this provision of the Code, it is unsatisfactory to rely on such advice when the Code states the opposite.

The Consultation Paper indicates that the Code will be formatted in two parts, one for official capacity and one for non-official capacity. In addition to paragraph 5, the current Code contains two provisions, those relating to intimidation in respect of a standards investigation (paragraph 3(2)(c)) and using the position as member to confer an advantage or disadvantage (paragraph 6), which are covered by the Code even when the conduct is in non-official capacity, if it constitutes a criminal offence. It is not clear whether these provisions are intended to be replicated in the revised Code. The implication in the consultation paper is that conduct which could reasonably be regarded as bringing the office or authority into disrepute is the only category of conduct to which the Code will apply where the conduct is in a non-official capacity. The Committee would seek clarification of this.

The Committee had no comments with regard to questions 7 and 8. With regard to question 9, the Committee felt that the timescale of two months was reasonable to provide members with sufficient time to undertake to observe the Code.

It is appreciated that Section 49(2A) of the Local Government Act 2000 requires that an Order specifying the General Principles of conduct must state that a principle applies to a person only when acting in an official capacity or that it applies to a person only when not acting in an official capacity. There is already a “duty to uphold the law”, and to propose a “duty to abide by the law” which applies only to non-official capacity seems almost to imply that there is no duty in official capacity not to engage in conduct which constitutes a criminal offence. On balance, in response to question 10, the Committee felt that it was not necessary to change the underlying general principles on which the Code is based.

Finally, in response to questions 11 and 12, the Committee felt that the definitions of “criminal offence” and “official capacity” should be the same for the purposes of the General Principles as for the Code, and that to have different definitions would be confusing.

### Employee Code

The Council’s Personnel Committee at its meeting on the 10th November 2008 considered Chapter 3 of the Consultation Paper, and its response is as follows:

The Committee noted that the Council already has its own Code of Conduct for employees, and felt that it would be helpful to forward to you a copy of this document with this response, as an example of a working code of conduct. A copy is therefore enclosed.

In response to question 13, the Committee felt that there should be a national Model Code of Conduct for employees, but that this should not be mandatory, but rather for guidance only, and that individual councils should be free to use it in developing their own code of conduct.

The Committee felt, in response to questions 14 and 15, that any code of conduct should cover all employees. This Council does not employ firefighters, teachers or community support officers. However, the Committee felt that there was no reason to exclude solicitors. Many other profession or occupational groups, such as accountants, environmental health officers and planning officers will have their own professional codes also, but none of these is likely to be inconsistent with any proposed model code.

In response to question 16, the Committee felt that there should be one set of core values for all employees. The Committee saw no reason why the requirements not to compromise the impartiality of officers and not to use a position improperly should be restricted to qualifying employees. The Committee felt that this proposal was tantamount to giving the impression that it was acceptable for other employees to use their position improperly.

However, with regard to the registration of interests, the Committee did agree that this should be restricted to qualifying employees, and that, in response to question 17, the selection of "qualifying employees" should be made on the basis of a political restriction style model, as in the Council's current code of conduct.

The Committee considered at length question 18 and whether the interests of qualifying employees should be publicly registered. The Committee felt that public registration should not be required below the level of Chief Officer, and that even then there should not be a requirement for an officer's home address to be publicly available.

In response to question 19, the Committee noted that the list of interests that qualifying employees would be required to register does not, unlike the Members' Code of Conduct, include membership or management of any body directed to charitable purposes or of any body one of whose principal purposes includes the influence of public opinion or policy. Nor does it include any other employment or business undertaken by the employee. The Committee felt that these items should be included.

The Committee had no comments in respect of questions 20 and 21, save that it might be appropriate to have a provision similar to paragraph 12(2) of the Members' Code, to ensure that an employee who has for example submitted a planning application is not placed in a less favourable position than any other member of the public making such an application.

The Committee were mindful that it is generally not easy for parish councils to recruit clerks, and that applying a mandatory code of conduct to such employees might be perceived as exacerbating this difficulty. However, the Committee felt that the response to question 22 should be left to individual parish councils.

I hope that these responses are helpful.

Yours sincerely,

HEAD OF LEGAL AND HUMAN RESOURCES/MONITORING OFFICER