



**Committee:** STANDARDS COMMITTEE  
**Date:** THURSDAY, 4<sup>TH</sup> DECEMBER 2008  
**Venue:** LANCASTER TOWN HALL  
**Time:** 10.00 A.M.

**A G E N D A**

1. **Apologies for Absence**
2. **Minutes**  
Minutes of meeting held on 19<sup>th</sup> June, 2008 (previously circulated).
3. **Items of Urgent Business authorised by the Chairman**
4. **Declarations of Interest**
5. **Guidance from the Adjudication Panel** (Pages 1 - 4)  
Report of the Monitoring Officer attached.
6. **Consultation on Code of Conduct for Local Authority Members** (Pages 5 - 40)  
Report of the Monitoring Officer attached.

**ADMINISTRATIVE ARRANGEMENTS**

**(i) Membership**

Councillors

Councillors Jon Barry, Roger Dennison, Sheila Denwood, Sarah Fishwick, Janie Kirkman, Roger Sherlock and Joyce Taylor

Independent Members

Stephen Lamley (Chairman)  
Tony James, David Jordison and Sue McIntyre

Parish Council representatives

Margaret Davy, Paul Gardner, Susan O'Brien and Frank Senior

**(ii) Substitute Membership**

Councillors

Councillors Keith Budden, John Gilbert, Roger Plumb, Ron Sands and Jude Towers

**(iii) Queries regarding this Agenda**

Please contact Debbie Chambers, Democratic Services - telephone (01524) 582057 or email [dchambers@lancaster.gov.uk](mailto:dchambers@lancaster.gov.uk).

**(iv) Changes to Membership, substitutions or apologies**

Please contact Members' Secretary, telephone 582170, or alternatively email [memberservices@lancaster.gov.uk](mailto:memberservices@lancaster.gov.uk).

MARK CULLINAN,  
CHIEF EXECUTIVE,  
TOWN HALL,  
DALTON SQUARE,  
LANCASTER LA1 1PJ

Published on Monday, 24<sup>th</sup> November, 2008.

**STANDARDS COMMITTEE****GUIDANCE FROM THE ADJUDICATION PANEL  
4th December 2008****Report of the Monitoring Officer****PURPOSE OF REPORT**

To draw Members' attention to guidance from the Adjudication Panel as to the circumstances in which it would consider accepting a referral from a Standards Committee.

**This report is public.**

**RECOMMENDATIONS**

- (1) **That the guidance from the Adjudication Panel be noted.**

**1.0 Introduction**

1.1 Members will be aware that Regulation 17 of the Standards Committee (England) Regulations 2008 provides that where, following an investigation, the Monitoring Officer refers a report to the Standards Committee, the Committee shall convene to consider the report, and make one of three findings. These are that the Standards Committee accepts the Monitoring Officer's finding that there has been no failure to comply with the Code, that the matter should be considered at a hearing of the Standards Committee, or that the matter should be referred to the Adjudication Panel for determination.

1.2 The President of the Adjudication Panel has issued guidance on the circumstances in which the Adjudication Panel would consider accepting a reference from the Standards Committee. A copy of the guidance is attached, and the Adjudication Panel has requested that it be circulated to all Standards Committee members.

**2.0 Proposal Details**

2.1 The Committee is asked to note the guidance. As suggested in the guidance, if a situation arose where an investigation report were to be submitted to the Standards Committee and a reference to the Adjudication Panel seemed to the Monitoring Officer to be a possibility, she would ask the President of the Adjudication Panel to indicate, prior to the consideration of the report by the Standards Committee, whether he would agree to accept such a referral. This would not in any way prejudice the matter or commit the Standards Committee to making a referral, but would avoid the Committee seeking to refer a matter that was not suitable.

2.2 The Committee is asked to note the report and the guidance.

<b>CONCLUSION OF IMPACT ASSESSMENT</b> <b>(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</b>  None arising from this report.	
<b>FINANCIAL IMPLICATIONS</b>  There are no financial implications arising from this report.	
<b>SECTION 151 OFFICER'S COMMENTS</b>  The Section 151 has been consulted and has no further comments.	
<b>LEGAL IMPLICATIONS</b>  There are no legal implications arising from this report.	
<b>MONITORING OFFICER'S COMMENTS</b>  The report has been prepared by the Monitoring Officer in her role as adviser to the Standards Committee.	
<b>BACKGROUND PAPERS</b>  None	<b>Contact Officer:</b> Mrs S Taylor <b>Telephone:</b> 01524 582025 <b>E-mail:</b> STaylor@lancaster.gov.uk

## **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.

**STANDARDS COMMITTEE****CONSULTATION ON CODE OF CONDUCT FOR LOCAL  
AUTHORITY MEMBERS  
4th December 2008****Report of the Monitoring Officer****PURPOSE OF REPORT**

To enable the Committee to consider a government consultation paper on proposed changes to the Members' Code of Conduct, and the response that should be submitted on behalf of the Council.

**This report is public**

**RECOMMENDATIONS**

- (1) **That the Committee consider the Consultation Paper, and authorise the Monitoring Officer to finalise the Council's written response in accordance with the Committee's views.**

**1.0 Introduction**

1.1 On the 1st October 2008, the Government published a consultation paper on Codes of Conduct for local authority members and employees. Chapter 3 of the consultation paper relates to the conduct of employees, and as any Code of Conduct would be incorporated into the contractual terms and conditions of employees, this falls within the remit of the Council's Personnel Committee. The Personnel Committee considered Chapter 3 at its meeting on the 10th November 2008, and requested the Head of Legal and Human Resources to finalise the Council's response based on the views expressed by the Committee.

1.2 Chapter 2 of the consultation paper relates to the Members' Code of Conduct, and considering the Council's response therefore falls within the terms of reference of this Committee. A copy of Chapter 2, together with the introduction to the consultation paper, the list of questions, and a copy of the current Model Code of Conduct are appended to this report.

**2.0 Proposal Details**

2.1 The main purpose of the consultation paper is to propose changes to the Code of Conduct which will result in the Code applying in some circumstances to the conduct of members outside their official capacity, and also to propose other minor revisions

to the Code based on experience of the practical operation of the current Code since its introduction in May 2007. The consultation paper asks a number of specific questions, and this report highlights the issues that Members may wish to consider in response to those questions.

- 2.2 On a more general point, the introduction to the consultation paper indicates that it is proposed that any changes to the Code would come into effect in line with the local government elections in 2009. The consultation paper does not set out the actual text of the proposed amended and re-formatted Code, and it is not clear whether there will be any subsequent consultation on that text. Past experience has been that following an initial general consultation, time constraints have meant that a Code has been produced by the government with little or no opportunity for further consultation, resulting in errors and inconsistencies, and Members may feel that it would be appropriate for the Council's response to request a realistic timetable for early consultation on an actual text, prior to implementation.
- 2.3 The government proposes that there should be a section of the Code covering the conduct of members in their non-official capacity which would provide that "Members must not bring their office or authority into disrepute by conduct which is a criminal offence". Members will recall that there is a similar provision within the current Code, but that there have been legal difficulties in implementing this, highlighted in the Livingstone case, as a result of which the Local Government Act 2000 was amended by the Local Government and Public Involvement in Health Act 2007. *Consultation Question 1 is "Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?"* Members may wish to agree 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 member's private life.
- 2.4 The government proposes that for the purposes of the Members' Code, the definition of criminal offence should be "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". *Consultation Question 2 is "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?"* Members may consider that the wording of the definition does not make it absolutely clear whether it is intended to refer to an offence for which a fixed penalty notice is not available, or to an offence for which the individual member was not given the option of a fixed penalty notice. A fixed penalty notice is sometimes available for relatively minor instances of what can be a serious offence. Members may feel that there may be circumstances where a fixed penalty notice is issued, but where the incident directly relates to a function of the Council and is relevant to the member's position as a member, and to which the Code of Conduct should be capable of applying. This is true likewise of police cautions, which may be administered for quite serious offences, to which the Code should perhaps be capable of applying. If all criminal offences, whether resulting in conviction, caution or fixed penalty, were included, the Assessment Sub-Committee would be able to take a view on the appropriate action, taking account of the relative seriousness of the matter.
- 2.5 The proposed definition of "criminal offence" relies on an actual conviction. This would appear to mean that there is no breach of the Code unless or until there is a conviction. This cross-references with Consultation Question 5 below. Members may wish to consider whether an actual conviction should form part of the definition, as the length of time that criminal proceedings may take may hamper the taking of action under the Code.



- 2.6 The government proposes that for the purposes of the Code, “official capacity” should 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 is “Do you agree with this definition of “official capacity” for the purpose of the members’ code? If not what other definition would you support?”* The definition would appear to be uncontroversial, but Members may wish to consider if they have any comments on it.
- 2.7 It is proposed that the Code will apply to a criminal conviction in a country abroad, where the offence was committed in that country, and would have been a criminal offence if committed in this country. *Consultation Question 4 is “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?”* This would appear to be uncontroversial. However, it is questionable why there should be a requirement for the offence and the conviction to have taken place in the same country.
- 2.8 *Consultation Question 5 is “Do you agree that an ethical investigation should not proceed until the criminal process has been completed?”* With the proposed definition of “criminal offence”, it would appear that a breach of the Code would only arise on conviction. Whilst it is recognised that it would be wrong to encourage a standards investigation which interfered with the criminal investigation, Members may feel that, with a different definition of “criminal offence”, it should be possible to take action against a member under the Code of Conduct without an actual conviction, where on the balance of probabilities there is evidence of criminal conduct. This will of course cross-reference with the answer to Consultation Question 2.
- 2.9 Other miscellaneous amendments to the Code of Conduct are proposed in the consultation paper, and *Consultation Question 6 is “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?”*
- 2.10 It is proposed that paragraph 12(2) of the Code should be made mandatory for parish councils. At present they have to make a positive decision if it is to apply. This would seem to be a sensible amendment, ensuring consistency between parish councils.
- 2.11 It is proposed that paragraph 8(1)(a)(i) and(ii) be amended to clarify that they refer to outside bodies and not the authority itself. The Monitoring Officer is not aware of any ambiguity here, but any clarification should be welcomed.
- 2.12 It is proposed that paragraph 8(1)(a) should be amended to clarify that a member is required to register a gift or hospitality with an estimated value of at least £25. Members may feel that the paragraph is currently unclear and suggests that the interests of the donor are required to be registered. It would be preferable if the paragraph made clear that the requirement is to register details of the gift or hospitality and its value, and the identity of the donor.
- 2.13 It is proposed to amend paragraph 10(2) to remove the double negative which can be confusing, and to clarify the meaning of “determining” in paragraph 10(2)(b). These proposals would seem uncontroversial.

- 2.14 It is proposed to amend paragraph 10(2)(c) to clarify that a member would not have a prejudicial interest in attending a standards committee hearing to give evidence. Again this would appear uncontroversial.
- 2.15 Members might wish to take this opportunity of repeating the suggestion that they have made in response to previous consultations, that the £25 threshold for gifts and hospitality should be increased to £100. £25 would barely cover a bouquet of flowers, and the threshold figure should perhaps be such an amount that might possibly influence a member's decision on a matter.
- 2.16 As currently worded, paragraph 11 precludes Cabinet members from attending Overview and Scrutiny meetings to answer questions about executive decisions they have made. The Standards Board has issued advice that the statutory power of Overview and Scrutiny to require the attendance of a member overrides this provision of the Code. However, Members may wish to suggest that the Code be amended to make this free from doubt, as it is unsatisfactory to rely on such advice when the Code clearly states the opposite.
- 2.17 *Consultation Questions 7 and 8 are "Are there any aspects of conduct currently included in the members' code that are not required, and are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included?"*
- 2.18 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. Clarification of this should perhaps be sought.
- 2.19 Members are asked to identify any other aspects of conduct that they would wish to refer to in the Council's response to questions 7 and 8.
- 2.20 It is envisaged that once a revised Code is implemented, Members will be required to give an undertaking to observe the Code, notwithstanding that they have already given an undertaking in accordance with Section 52 of the Local Government Act 2000 to observe the authority's code "for the time being". *Consultation Question 9 is "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?"* The timescale would seem to be a reasonable one.
- 2.21 The government is proposing to amend the General Principles of conduct, which are established by Order and form a preamble to the Code, to make it clear that the ten existing Principles apply to conduct in official capacity, and to add a new principle which would apply to a member acting in a non-official capacity. This would be "Members should not engage in conduct which constitutes a criminal offence". *Consultation Question 10 is "Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?"* Section 49(2A) of the Local Government Act 2000 requires that an Order specifying

the general principles 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. This appears to mean that one principle cannot apply to both official and non-official capacity. There is already a “Duty to Uphold the Law” in existing principle 8, and it does seem a little bizarre to have a new principle of a “Duty to abide by the law” which applies only to non-official capacity. The implication almost seems to be that there is no duty in official capacity not to engage in conduct which constitutes a criminal offence. Members may be of the view that it is not necessary to change the underlying general principles on which the Code is based.

2.22 Section 49 of the Local Government Act 2000 enables the Secretary of State to define what constitutes “criminal offence” and “official capacity” in the context of the General Principles Order. It is proposed that “criminal offence” will be defined as any conduct that has resulted in a criminal conviction. *Consultation Question 11 is “Do you agree with this broad definition of “criminal offence” for the purpose of the General Principle Order? Or do you consider that “criminal offence” should be defined differently?”* For the purposes of the General Principles Order, Members may feel that the definition should be restricted to criminal conduct “which compromises the reputation of the member’s office or authority, or their ability to perform their functions as a member”. There is also a dilemma as to whether the definition should be wide enough to cover criminal conduct which has resulted in a caution or fixed penalty notice.

2.23 It is proposed that the definition of “official capacity” for the purposes of the General Principles Order will be “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 is “Do you agree with this definition of “official capacity” for the purpose of the General Principles Order?”* Members will note that this is the same proposed definition as for the Code of Conduct.

### **3.0 Details of Consultation**

3.1 There has been no consultation on this report. The government has sent the consultation paper to all principal and parish councils giving them the opportunity to comment.

### **4.0 Options and Options Analysis (including risk assessment)**

4.1 It is open to the Committee to decide not to respond to the consultation paper. However, if it wishes to respond, it may submit its views on any or all of the questions posed in the consultation paper. There are no specific options.

### **5.0 Conclusion**

5.1 The Committee’s views are sought.

<b>CONCLUSION OF IMPACT ASSESSMENT</b> <b>(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</b>
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None arising from this report.

**FINANCIAL IMPLICATIONS**

There are no financial implications arising from this report.

**SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments.

**LEGAL IMPLICATIONS**

Legal Services have been consulted and have no further comments.

**MONITORING OFFICER'S COMMENTS**

The report has been prepared by the Monitoring Officer in her role as adviser to the Standards Committee.

**BACKGROUND PAPERS**

None.

**Contact Officer:** Mrs S Taylor

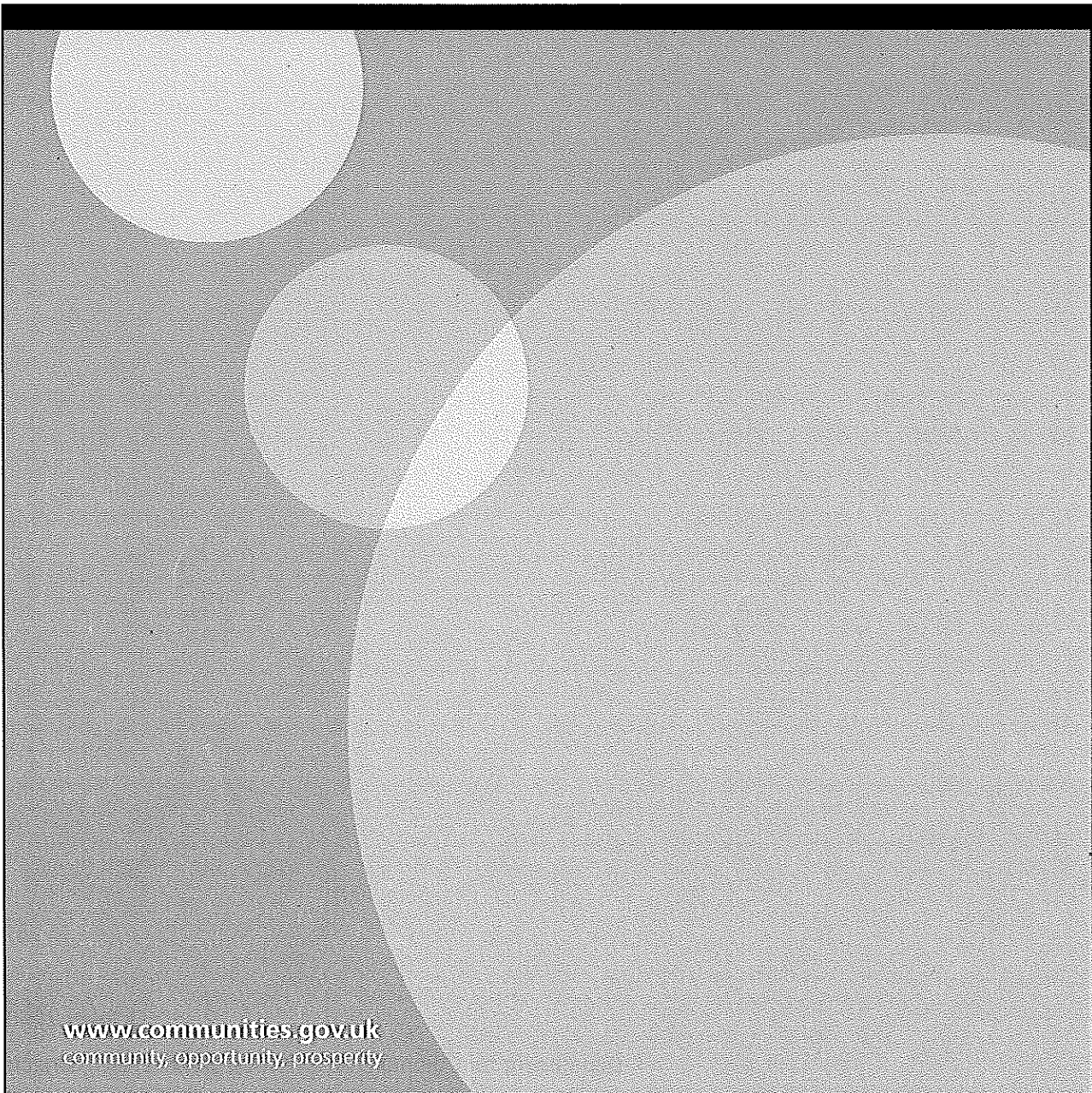
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Communities in control: Real people, real power  
Codes of conduct for local authority members and  
employees  
**A consultation**





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

**A consultation**

October 2008

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# Chapter 1: The consultation and how to respond

## Communities in control consultation papers

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

## About this consultation

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

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

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

## Who are we consulting?

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

## How to respond

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

Karl Holden  
Conduct and Council Constitutions Team  
Communities and Local Government  
Zone 5/B2, Eland House  
Bressenden Place  
London  
SW1E 5DU  
  
e-mail: [conductcode@communities.gsi.gov.uk](mailto: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](http://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](http://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](http://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.



# Annex A: List of consultation questions

## Chapter 2: Code of conduct for local authority members

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

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

### Chapter 3 Model Code of Conduct for local authority employees

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

# Annex B

## SCHEDULE

### THE MODEL CODE OF CONDUCT

#### Part 1

#### General provisions

##### **Introduction and interpretation**

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

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

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

(4) In this Code—

“meeting” means any meeting of—

(a)

the authority;

(b)

the executive of the authority;

(c)

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

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

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

##### **Scope**

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

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

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

and references to your official capacity are construed accordingly.

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

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

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

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

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

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

### General obligations

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

(2) You must not—

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

(b) bully any person;

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

(i) a complainant,

(ii) a witness, or

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

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

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

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

4. You must not—

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

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

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

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

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

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

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

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

6. You—

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

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

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

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

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

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

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

(b) your authority's monitoring officer,

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

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

## Part 2

### Interests

#### Personal interests

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

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

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

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Disclosure of personal interests**

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

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

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

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

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

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

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

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

#### **Prejudicial interest generally**

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

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

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

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

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

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

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

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

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

(v) any ceremonial honour given to members; and

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

#### **Prejudicial interests arising in relation to overview and scrutiny committees**

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

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

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

#### **Effect of prejudicial interests on participation**

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

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

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

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

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

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

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

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

### Part 3

#### Registration of Members' Interests

##### Registration of members' interests

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

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

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

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

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

##### Sensitive information

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

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

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



# Annex C: Consultation Code of Practice

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

## The Consultation Criteria

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

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

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

email: [consultationcoordinator@communities.gsi.gov.uk](mailto:consultationcoordinator@communities.gsi.gov.uk)