

## **Joint Standards Committee**

- To:** Mrs Christine Bainton (Independent Member, in the Chair)  
Cllrs Horton (Vice-Chair), Waudby, Hudson and Taylor  
Mr A L Dixon (Independent Member), Mr M R Hall (Independent Member) and Mr D Wilson (Independent Member)  
Cllrs Crawford (Parish Council Member), Mellors (Parish Council Member) and Forster (Parish Council Member)
- Date:** Friday, 14 November 2008
- Time:** 3.00 pm
- Venue:** The Guildhall, York

## **AGENDA**

### **ABOUT CYC MEETINGS**

Note: This meeting will be followed by a short training session, for all members of the Standards Committee, on delivering local determinations and setting sanctions. Exercises for this session will be circulated to members at the meeting.

**1. Declarations of Interest**

At this point, members are asked to declare any personal or prejudicial interests they may have in the business on this agenda.

**2. Minutes (Pages 3 - 4)**

To approve and sign the minutes of the meeting of the Standards Committee held on 19 September 2008.

**3. Public Participation**

At this point in the meeting, members of the public who have registered their wish to speak, regarding an item on the agenda or an issue within the remit of the Standards Committee, may do so. The deadline for registering is 10 am on Thursday 13 November 2008.

**4. Feedback from Standards Board Conference**

To receive a verbal report from the Chair and the Monitoring Officer on the Seventh Annual Assembly of Standards Committees, held at the International Convention Centre in Birmingham on 13-14 October 2008.

**5. Feedback from the First Local Assessments Conducted at City of York Council**

To note the outcome of the first local assessments of complaints conducted at City of York Council under the Standards Committee (England) Regulations 2008.

**6. Consultation on Possible Revisions of the Members' Code of Conduct and Proposed Introduction of a Model Officers' Code of Conduct (Pages 5 - 62)**

To discuss and agree a response to a government consultation paper seeking views on proposed changes to the Members' Code of Conduct and the introduction of a model Officers' Code of Conduct. A copy of the consultation paper, together with a response prepared by Peter Keith Lewis, an expert in this field, is attached.

**7. Review of Work Plan (Pages 63 - 64)**

To review the work plan for the Standards Committee for the 2008/09 Municipal Year. A copy of the latest approved work plan is attached.

**8. Any other business which the Chair decides is urgent under the Local Government Act 1972.**

Democracy Officer:

Name: Fiona Young

Contact Details:

- Telephone – (01904) 551027
- E-mail – [fiona.young@york.gov.uk](mailto:fiona.young@york.gov.uk)

For more information about any of the following please contact the Democratic Services Officer responsible for servicing this meeting:

- Registering to speak
- Business of the meeting
- Any special arrangements
- Copies of reports

Contact details are set out above.

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## About City of York Council Meetings

### Would you like to speak at this meeting?

If you would, you will need to:

- register by contacting the Democracy Officer (whose name and contact details can be found on the agenda for the meeting) **no later than 5.00 pm** on the last working day before the meeting;
- ensure that what you want to say speak relates to an item of business on the agenda or an issue which the committee has power to consider (speak to the Democracy Officer for advice on this);
- find out about the rules for public speaking from the Democracy Officer.

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### Further information about what's being discussed at this meeting

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### **Scrutiny Committees**

The purpose of all scrutiny and ad-hoc scrutiny committees appointed by the Council is to:

- Monitor the performance and effectiveness of services;
- Review existing policies and assist in the development of new ones, as necessary; and
- Monitor best value continuous service improvement plans

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- Councillors get copies of all agenda and reports for the committees to which they are appointed by the Council;
- Relevant Council Officers get copies of relevant agenda and reports for the committees which they report to;
- Public libraries get copies of **all** public agenda/reports.

City of York Council

Minutes

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MEETING	STANDARDS COMMITTEE
DATE	19 SEPTEMBER 2008
PRESENT	MRS BAINTON (INDEPENDENT MEMBER, IN THE CHAIR) COUNCILLORS HORTON (VICE-CHAIR), I WAUDBY AND TAYLOR (CYC MEMBERS) MR DIXON, MR HALL AND MR WILSON (INDEPENDENT MEMBERS) COUNCILLORS CRAWFORD AND FORSTER (PARISH COUNCIL MEMBERS)
APOLOGIES	COUNCILLORS HUDSON AND MELLORS

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#### 9. **DECLARATIONS OF INTEREST**

Members were invited to declare at this point in the meeting any personal or prejudicial interests they might have in the business on the agenda. No interests were declared.

#### 10. **MINUTES**

RESOLVED: That the minutes of the Standards Committee meeting held on 18 July 2008 be approved and signed by the Chair as a correct record.

#### 11. **PUBLIC PARTICIPATION**

It was reported that there had been no registrations to speak at the meeting under the Council's Public Participation Scheme.

#### 12. **REVIEW OF WORK PLAN**

Members considered a proposed work plan for the Standards Committee for the next two meetings of the 2008/09 municipal year.

RESOLVED: That the work plan attached to the agenda be agreed.

C BAINTON

Independent Member, In the Chair

[The meeting started at 3.05 pm and finished at 3.10 pm.]

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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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Bressenden Place  
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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.

# 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 1/100<sup>th</sup> 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) 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)



**Code of Conduct for Local Authority Members and Officers****A Response to Consultation****1 Code of Conduct for Members****Responses to the specific questions:****1.1 Q1 – Do you agree that the Members’ Code should apply to a member’s conduct when acting in their non-official capacity?**

It is clear that some conduct in private life can reflect upon a member’s suitability to continue as a member, and that leaving a member in place until the next elections give the electorate an opportunity to remove him/her from office can seriously damage the reputation of an authority and of local government in general. It is therefore important that the Code of Conduct for Members should apply to at least some conduct in a member’s private life.

However, the Consultation Paper makes no mention of the deficiency of drafting of Section 183 of the 2007 Act (new Section 49(2B) of the LGA 2000). This section provides that the Principles, and therefore the Code, can apply to conduct which “would constitute a criminal offence”. But criminal conduct is a criminal offence whether or not it is prosecuted, so the use of the conditional in the word “would” means literally “conduct which would constitute a criminal offence if some unfulfilled condition was met” – i.e. conduct which currently does not constitute a criminal offence. Accordingly the Council considers that amendment of the primary legislation is required before the Code can actually be applied to criminal conduct in private life.

**1.2 Q2 – Do you agree with the definition of “criminal offence” for the purpose of the Members’ Code? If not, what other definition would you support? Please give details.**

CLG’s intention is that, by excluding criminal offences which result in a fixed penalty notice, the application of the Code should be limited to the more serious offences, and also avoid the confusion as to what fixed penalty notices constitute a criminal conviction, which are civil matters, and which are an alternative to prosecution. However, the proposed wording is insufficiently precise, as it can be interpreted as offences for which a fixed penalty notice is not available, or as an offence in connection with which the individual member was not given the option of a fixed penalty notice.

Further, a fixed penalty notice is sometimes available for relatively minor instances of what can be a serious offence, such as unauthorised tipping of waste materials. And failure by a member to comply with a regulatory regime which that member is responsible for enforcing can reflect very seriously on the credibility of that member, of the authority and of the regulatory regime. Thus, according to one interpretation, if a member who is the Portfolio Holder for Waste and the Environment were caught fly-tipping toxic chemicals above an aquifer, the availability of a fixed penalty notice for the offence of fly-tipping could take the offence outside the scope of the Code.

Even if the specific incident was at a level appropriate for a fixed penalty notice for fly-tipping, the offence would so directly relate to the member’s responsibilities within the authority that it would be directly relevant to their credibility and that of



their authority, and accordingly the Code of Conduct should be capable of responding to that event. Where the offence is minor, or is not directly relevant to their work as a member, there remains the option for the Standards Committee (Assessment Sub-Committee) to resolve not to take any action in respect of it. Accordingly, there is no loss and considerable advantage in including all criminal offences, whether they result in actual prosecution or a fixed penalty notice.

Despite the provisions of the Local Government and Public Involvement in Housing Act 2007, there remains a valid issue as to whether the Code's application to private life should be limited to criminal conduct. Thus, many disclosures of confidential information occur in a member's private life. They are still disclosures of confidential information which the member has received in his/her capacity as a member, and they are just as damaging to the authority and to the credibility and reputation of members, but they occur in the pub or otherwise outside official activities, rather than in the course of a Council debate. As the conduct is just as reprehensible, and the damage is just the same as for disclosures during official activities, the Council considers that such disclosures should be equally covered by the Code of Conduct?

Equally, it is remarkable that the Code of Conduct as proposed would not cover misuse of confidential information for personal advantage. If the Cabinet Member for Environment gained insider information about future housing planning policy, and used that information in his/her private life to buy land which was likely to increase in value once the policy was published, since this would not result in a criminal conviction, it is not covered by the current or proposed Code, and yet this is precisely the sort of abuse of position which the Code of Conduct was originally intended to cover, but now does not cover.

1.3 **Q3 – Do you agree with this definition of “official capacity” for the purposes of the Members’ Code? If not, what other definition would you support? Please give details.**

The basic general conduct provisions of the Code apply only when a member is acting in an official capacity. CLG proposes that “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.”

See above as to whether it is appropriate that the Code of Conduct should apply only to criminal conduct when the conduct is not “in an official capacity”.

A particular issue arises from the reference to acting as a “representative” of a local authority, as the word “representative” is not defined in the Act or the Code. Paragraph 2(5) clearly envisages that a member can be acting as a representative of the authority even where he/she is acting on behalf of another body. This illustrates the lack of precision, and therefore the scope for confusion, in the proposed drafting.

As the word “representative” is no longer used in the exceptions to prejudicial interests, there is no magic to its use here, and a more precise definition should be used, such as that the member was “engaged in the business of a body to which he/she has been appointed by, on the nomination of, or with the approval of the authority.”





1.4 **Q4 – 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?**

The basic proposition is acceptable, but the Consultation Paper goes on to provide that the Code would only apply if the member was convicted in the country in which the offence was committed. No explanation for this proposal is provided. That is more problematic. Thus, for example, an Internet child pornography offence may well justify action under the Code of Conduct, but may be prosecuted in the USA under current law where the activity occurred in the UK but the images passed through a US computer server. At the extreme end of the scale, genocide and war crime offences may be tried in the International Criminal Court in the Hague, although the offence occurred in Bosnia. Serious corporate fraud can also be tried in the USA although the defendants have never entered the USA, but the offence impacted on US companies. And the UK law of corruption has recently been extended to include corruption overseas but triable in the UK. But clearly such a criminal conviction should be within the scope of the code of conduct, as it reflects so directly on the suitability of the member to continue to act as a member of a local authority. Accordingly the Council does not support the proposal that the conviction must arise in the same country as the offence was committed.

1.5 **Q5 – Do you agree that an ethical investigation should not proceed until the criminal process has been completed?**

There are three aspects to this question:

1.5.1 Should the breach of the code arise when the criminal conduct occurs, or only when a conviction has resulted? In other words, should it be possible to make a complaint about criminal conduct in advance of an actual conviction?

On occasions the fact of guilt is very evident long before the actual prosecution or conviction, and there can be a long interval between the events and the conviction. In a serious fraud case, this can be up to six years. In the case of Councillor J. Speechley’s prosecution for misconduct in public office, it was some three years before the trial, and a further year before his appeal against conviction was rejected as wholly unmeritorious. It would risk bringing the process into serious disrepute if no complaint can even be entered until so long after the events. Accordingly, there should not be any limit on making a complaint before conviction.

1.5.2 Should the actual investigation be held over until a criminal conviction has occurred?

The Council recognises that it would be wrong to encourage a standards investigation which interfered with the criminal investigation. But where there is a long gap between the events and a conviction it discredits the standards system if no action can be taken, especially where the member’s guilt may be very evident, or he/she may even have admitted guilt. Accordingly, there should be no bar on standards investigations and proceedings in advance of conviction



- 1.5.3 Should the actual conviction before a criminal court be the only admissible evidence of criminal conduct?

If a complaint is to be admissible before conviction, it follows that conviction cannot be the only admissible evidence of the criminal offence.

Standards proceedings are civil proceedings. They determine matters on the balance of the evidence before them. An actual conviction in a criminal court is the most cogent evidence of guilt, but it is not a comprehensive test. Thus, the member may have admitted guilt, or civil proceedings may have resulted in an injunction against the member for harassment, but there may either be no prosecution or the prosecution may not have been completed. Not all criminal offences result in a prosecution, so a member might have been sued successfully for fraud, which reflects very badly upon their suitability to be in control of public funds, but the CPS may have decided that despite evident guilt no public interest would be served by an actual prosecution. At an extreme level, if a member were found with their hand in the authority's till, or with the murder weapon in hand, or civil proceedings have demonstrated facts which amount to a criminal offence, it does local government no credit to leave the member in office until an eventual conviction.

Accordingly, evidence of criminal conduct other than a conviction by a criminal court should be admissible as evidence of criminal conduct. Otherwise much of the force of this provision will be lost, and complaints will be seriously delayed, discrediting the process.

- 1.6 **Q6 – 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?**

- 1.6.1 Make Paragraph 12(2) mandatory rather than adoptive for Parish Councils

At present, Paragraph 12(2), allowing a member who has a prejudicial interest to make representations as a member of the public but not take part in the decision itself, is a mandatory provision for most authorities, but only applies to Parish Councils if positively adopted. The Council considers that it would be sensible to make this mandatory for Parish Councils.

- 1.6.2 Membership of other bodies

It is suggested that Paragraphs 8(1)(a)(i) and (ii) be amended to make it clear that this refers to another body of which you are a member, or which exercise functions of a public nature. The Council is not aware of any ambiguity or confusion here, but if there is a problem we would support clarification.

- 1.6.3 Registration of Gifts and Hospitality



It is suggested that Paragraph 8(1)(a)(vii) might usefully be amended to clarify that a member is required to register any gift or hospitality with an estimated value of at least £25. The current drafting of Paragraph 8(1)(a)(vii) is different from that of other such outside interests, as it refers to “the interests” of the donor of hospitality provider, rather than referring to the donor or hospitality provider itself. This does not fit with the registration requirement in Paragraph 13, as taken literally it requires the member to register “the interests of” the donor or hospitality provider. Accordingly, Paragraph 8(1)(a)(vii) should be amended by the deletion of the words “the interests of”, and Paragraph 13 should be amended by the addition of a new Paragraph 13(3) as follows – “(3) In respect of a personal interest arising under Paragraph 8(1)(a)(vii), you must register both the identity of the person from whom you have received the gift or hospitality and provide details of the gift or hospitality and its estimated value.”

#### 1.6.4 Prejudicial Interests

Paragraph 10 (1) and (2) could certainly be clarified if they were re-drafted to avoid the current double-negative. An amplification of the meaning of “determination” would be helpful. However, this Paragraph would still remain flawed because of the lack of clarity as to when the determination of an approval, consent, licence, permission is “in relation to” the member. The Council suggests that this be changed to say “determination of an application for approval..... made by you or on your behalf.”

The disapplication of Paragraph 10(2)(c) to giving evidence before a Standards Committee would be welcome.

#### 1.6.5 Registration of Interests

It is proposed that existing registrations of interests should carry forward when the revised Code is introduced. In 2007, it could be argued that this was not appropriate as the Code had been altered to require the additional registration of gifts and hospitality, but this did mean that all members had to be reminded to put in a new registration. However, it is good practice to give each member a copy of their existing register entries in May each year and ask them to ensure that it is up to date. Where this practice is followed, a new registration, incorporating any changes in the definitions of registrable interests, would be obtained anyway.

#### 1.6.6 Additional Suggested Amendment - Application to suspended Members

The majority of the Code as currently drafted does not apply to a member when he/she is suspended. We have therefore had the spectacle of a member being strongly disrespectful of a Standards Committee following his suspension, but its not being covered by the Code. The Council suggests an amendment to Paragraph 2(2) to provide that a member’s conduct in relation to his/her authority shall



be treated as being in an official capacity notwithstanding that the member was suspended at the time of the conduct

1.6.7 Additional Suggested Amendment - Disclosure and misuse of confidential information in private life

The disclosure of confidential information which a member has obtained through their connection with the authority, or its use for personal advantage, in private life, would be an example of serious misconduct, but at present this is not covered by the Code of Conduct. It is necessary to further amend Section 51 of the Local Government Act 2000 to refer to conduct which **does** constitute a criminal offence, rather than “**would**” constitute a criminal offence, so it is relatively simple to provide that non-criminal conduct can amount to a breach of the Code, where this is specified in the Code, and then amend Paragraph 2(3), such that Paragraphs 4 and 6(a) can constitute a breach of the Code even where the conduct occurs in private life and does not amount to a criminal offence.

1.6.8 Additional Suggested Amendment – Value of Shareholdings

Whilst the current use of a nominal value of £25,000 as the threshold for registration and declaration of shareholding has the benefit of certainty, the recent volatility of share values has pointed up its arbitrary nature. Thus a shareholding with a £25,000 nominal value may have little or no trading value, and similarly a member may have one or two £1 shares in a private company, which may have a trading value in millions. It is also limited to one class of securities, so that a member may have £20,000 nominal value in each of five classes of securities, and still have no requirement to disclose or register that interest. The Council therefore suggests that it would be appropriate to amend Paragraph 8(1)(a)(vi) to provide that a member has a personal interest in “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 the securities of that person or body that exceeds a nominal value of £25,000, a current market value of £25,000 or 1/100th of the total issued share capital”.

1.6.9 Additional Suggested Amendment – Gifts and Hospitality

With the passage of some seven years since the Code was introduced, the £25 threshold for declaration of gifts and hospitality has diminished by some 20% in real value. With the additional requirement to declare relevant gifts and hospitality at meetings, it is now appropriate at least to restore the original real value of the threshold in Paragraph 8(1)(a)(viii) and perhaps to set the value at a level such as £100 at which members would only have to declare and register really significant gifts and hospitality, of such a size that they might possibly influence the member's decision on a matter.

1.6.10 Additional Suggested Amendment – Close Association

Whilst The Council understands the intention of the 2007 Code amendment to extend beyond “friends” to business colleagues and



enemies, the phrase “person with whom you have a close association” is extremely vague. The Standards Board for England’s description of the phrase is of little assistance: “A person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts.”

Whether in the Code or in supporting Guidance it is necessary to make it clear that this provision only covers people with whom the member has such a close continuing relationship that a member of the public might reasonably conclude that it is likely to influence the member’s perception of the public interest on matters which affect that individual.

- 1.6.11 Additional Suggested Amendment – the majority of council tax payers, ratepayer or inhabitants of the electoral division or ward affected by the decision.

The present Paragraph 8(1)(b) is unclear as to whether the comparator in any particular case is **either** council tax payers, ratepayers or inhabitant, **or** the aggregate of all three categories. In practice, it must be the category which the member comes within for this purpose, otherwise the relatively higher numbers of “inhabitants” would always dominate and make the mention of the other categories redundant. The Council suggests that Paragraph 8(1)(b) be amended to read “.... Than the majority of either the council tax payer, ratepayers or inhabitants of the ..... , in any case being a category of which you or the relevant person is a member.”

- 1.6.12 Additional Suggested Amendment – Disclosure of Personal Interests

Paragraph 9(1) requires disclosures “at the commencement of consideration (of the matter)”. In practice most authorities have disclosures of interest at the start of the meeting, which is advantageous in drawing to members’ attention the need to make disclosures, allowing officers to remind individual members where a member may have forgotten to make such disclosure, and allowing the meeting then to discharge its business without frequent interruption. The Council suggests that Paragraph 9(1) should be amended to reflect this practice, to read “... at the commencement of the meeting or at such earlier occasion during the meeting as is prescribed by the authority for this purpose, or when the interest becomes apparent.”

- 1.6.13 Additional Suggested Amendment – Registration of Sensitive Information

A relatively minor point, but the drafting of Paragraph 14(1) does not provide an audit trail. So the member can inform the Monitoring



Officer verbally of the sensitive information, and the Monitoring Officer can give verbal agreement to the fact that the information is sensitive. Then, when a complaint is made that the member has failed to register the interest, there is then no written record that the member has got clearance, leaving the conscientious member exposed. As a very simple amendment, The Council suggests that Paragraph 14(1) be amended to read as follows – “When you notify your authority’s Monitoring Officer in writing that you consider that particular information relating to any of your personal interest is sensitive information, and your authority’s Monitoring Officer has notified you in writing that he/she agrees that it is sensitive, you need not.....”

**1.7 Q7 – Are there any aspects of conduct currently included in the Members’ Code of Conduct that are not required? If so, please could you specify which aspects and the reasons why you hold this view?**

**1.7.1 Additional Suggested Amendment – Disclosure of Public Service Interests**

The Council has not found any benefit from the introduction of Paragraph 9(2) in the 2007 revisions, which also introduced a problem in respect of prejudicial interests, in that by the time a member would come to disclose such an interest, he/she would already have been required to leave the room, thus preventing them from making any disclosure of such interests. Accordingly, we suggest that Paragraph 9(2) be deleted.

**1.7.2 Additional Suggested Amendment – Overview and Scrutiny Committees**

Paragraph 11 provides that a member of the authority’s executive will have a prejudicial interest in the matter when he/she is interviewed by the authority’s Scrutiny Committee in respect of an executive decision which he/she has made. The Standards Board for England’s advice has been that the power of the Scrutiny Committee to require the attendance of the member overrides the Code, but there is no clear basis for this assertion. On the plain words of the Code of Conduct, in the absence of any such exception in the legislation, it would appear that the executive member is required to attend, but then has a prejudicial interest and would be in breach of the Code of Conduct if he/she remained. Accordingly, in line with the suggested amendment for members giving evidence before Standards Committees, the Council would suggest that the exception in Paragraph 12(2) be extended to provide that attendance to give evidence at the request of the Scrutiny Committee should not be a breach of the Code of Conduct.

**1.8 Q8 – Are there any aspects of conduct in a member’s official capacity not specified in the Members’ Code of Conduct that should be included? Please give details.**

**1.8.1 Additional Suggested Amendment – Application to informal meetings, Site Visits and Correspondence**





The definition of “meetings” in Paragraph 1(4) is currently very limited. There is public concern at the possible undue influence applied by members in informal meetings and correspondence, for which there is no public access. The Welsh Code for Members has addressed this by extending the definition of “meetings” to include “informal meetings between a member and one or more other members or officers of the authority, other than group meetings”, and by requiring members to disclose that they are members in any correspondence with the authority, even if that correspondence is in a private capacity. This makes the position absolutely clear. It can readily be checked by inspection of correspondence and disclosure of officers’ notes of meetings as background papers when formal decisions come to be taken.

1.8.2 Additional Suggested Amendment – Application to Ward Councillor Decision-Making

Section 236 of the Local Government and Public Involvement in Health Act 2007 enabled local authorities to arrange for the discharge of functions by a ward Councillor within that ward. It made no provision for the application of the Members’ Code to such discharge of functions. The normal rules on disclosure of personal and prejudicial interests do not apply in this case as there is no “meeting”, yet the potential for conflicts of interest are greatly increased where a Councillor is taking decisions in the area in which he/she lives, where his/her family go to school and have their friends, or where he/she has his/her business. The obvious amendment would be to apply Paragraphs 9(6) and 12(1)(b) and (c) to any decision-making under Section 236, and require the recording of any personal interest in the record of the decision.

1.8.3 Additional Suggested Amendment – Private Representations

A dilemma arises where a member wishes to make representations to his/her own authority in a private capacity, for example as a householder in respect of a neighbouring planning application. On the one hand, disclosing in the representation the fact that he/she is a member risks an accusation of improper use of the member’s position to influence the decision. On the other hand, as the officers are probably well aware of the identity of the correspondent, failing to disclose this fact can risk an opposite accusation that the member is acting in an underhand manner. The Welsh Members’ Code has taken a robust approach and simply provided that a member must disclose the existence and nature of your personal interest when he/she makes representations to the authority on a matter in which he/she has a personal interest and, if the representations are made verbally, must then confirm that interest in writing within 14 days. This satisfactorily resolves this dilemma, enabling the fact of the member’s interest to be recorded in the correspondence.

1.8.4 Additional Suggested Amendment – Acting in the Public Interest and having regard to Officers’ Advice



The current Code contains no requirement to act in the public interest, as this fundamental requirement is relegated to the General Principles. Equally, the requirement in Paragraph 7(1) to have regard to officer advice is limited to the statutory reports of the Chief Finance Officer and the Monitoring Officer. These provisions are much better covered in the current Welsh Code of Conduct as follows:

“8. In participating in meetings and taking decisions on the business of the authority, you must –

- (a) do so on the basis of the merits of the circumstances and in the public interest
- (b) have regard to any relevant advice provided by the authority’s officers – in particular by:
  - (i) the Chief Finance Officer
  - (ii) the Monitoring Officer
  - (iii) the Chief Legal Officer, who should be consulted whenever there is any doubt as to the authority’s powers to act, or as to whether the action proposed lies within the policy framework agreed by the authority; where the legal consequences of action or failure to act by the authority might have important repercussions.”

1.9 **Q9 – Does the proposed timescale of two month, during which a member must give an undertaking to observe the Members’ Code of Conduct, starting from the date on which the authority adopts the Code, provide members with sufficient time to undertake to observe the Code?**

Firstly, it has been suggested that the provisions of Section 183(7) of the Local Government and Public Involvement in Health Act 2007 cannot alter the historic fact that when members gave an undertaking to observe the Code of Conduct, they could not have given a valid undertaking to observe those parts of the Code of Conduct which were at the time ultra vires the Local Government Act 2000. Accordingly, it would appear to be necessary for a member to give a new undertaking before the revised Code can apply to events in the member’s private life.

Note, however, that as set out above, it is suggested that the wording of Section 51(4B) of the Local Government Act 2000 (“which would constitute a criminal offence”) needs to be amended before the Members’ Code of Conduct can apply to conduct which does constitute a criminal offence, and that amendment would be required before members gave such a new undertaking.

Further, it is suggested that the current wording of Section 52(1)(a) of the Local Government Act 2000, requiring members to give an undertaking to observe the authority’s Code of Conduct “for the time being”, is capable of interpretation as meaning that it is only an undertaking to observe the Code of Conduct which is adopted by the authority at the time that the undertaking is given. If that interpretation is correct, then a historic undertaking to observe the authority’s Code of Conduct would not automatically carry forward to a revised Code of Conduct.

For all of these reasons, the Council agrees that it is appropriate to require members to give a fresh undertaking to observe the revised Code of Conduct following its adoption by the authority of which they are a member. The two month period for such undertakings was applied in 2001, when the Code of Conduct was





first adopted by each authority and is perfectly reasonable, but it is equally certain that in some authorities there will be members who fail to give such undertaking within that time. We therefore suggest that it would be appropriate, if the opportunity exists to amend the 2000 Act, to provide a basic requirement to give an undertaking within two months, and that if an undertaking is not given within that period then the member concerned is not disqualified but is prohibited from acting as a member of that authority until he/she has given such an undertaking.

**1.10 Q10 – Do you agree with the addition of a new General Principle, applied specifically to conduct in a member’s non-official capacity, to the effect that a member should not engage in conduct which constitutes a criminal offence?**

The General Principles are supposed to be the enduring principles which underlie the Code. As such they should not be changed unless there are overriding reasons for doing so. Whilst this exhortation is clear well-intended, it is much wider than the Members’ Code of Conduct, which is supposedly limited to criminal conduct which relates in some manner to the member’s position as a member. In addition, the core principle is already substantially covered by General Principles 2 (Honesty and Integrity) and 8 (Duty to uphold the Law). Accordingly the Council is of the view that adding a general and unrestricted Principle of not engaging in criminal conduct is unnecessary.

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

As set out above, the Council does not consider that it is necessary or helpful to change the General Principles for this purpose. However, if a change is to be made it should be limited to criminal conduct “which compromises the reputation of the member’s office or authority, or their ability to perform their functions as a member”.

**1.12 Do you agree with this definition of “official capacity” for the purpose of the General Principles Order?**

The Consultation Paper suggests that this new General Principle should be limited to conduct when “you are 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.”

This is completely at odds with the intention as set out above to implement the provisions of the Local Government and Public Involvement in Housing Act 2007 in order to apply the Code of Conduct to criminal conduct in private life. If implemented as suggested, it would mean that the General Principles were narrower than the Code of Conduct which is supposed to give effect to them. Accordingly, the Council considers that the new General Principle, if adopted, should apply to criminal conduct “which compromises the reputation of the member’s office or authority, or their ability to perform their functions as a member”.

Note that the General Principles are currently drafted in the third person whereas the suggested new General Principle is drafted in the second person. Clearly the drafting should be consistent.



## 2 Code of Conduct for Employees

The first point to be made is that the Office of the Deputy Prime Minister (predecessor of Communities and Local Government) consulted on a draft Code for Officers in August 2004. That consultation was significantly more thorough than the present consultation, as it asked 16 questions, in contrast to the ten questions posed in the current consultation. The majority of the questions posed this time around are mere repetition of the questions posed in 2004, causing one to question what account if any ODPM took of the responses submitted then and whether there is any greater commitment now to implement an Officer Code of Conduct, given the lack of urgency since the legislation was enacted in 2001, and since a Welsh Code of Conduct was brought into effect in 2001. In addition, many of the questions posed in the 2004 consultation but omitted from the current consultation remain as pertinent today as they were then.

As ever, the detail is just as important as the Principles. Consultation on limited questions, even if for the full 12 week period set out in the Consultation Code of Practice, is of little worth if the draft Code covers issues which have not been canvassed in those limited questions, and there is inadequate time allowed for a meaningful consultation on the actual draft text. We have all too much experience of the difficulties caused by such inadequate consultation and the rushed implementation of Codes which have been drafted or re-drafted without taking account of the practical experience of local government.

### 2.1 **Q13 – Do you agree that a mandatory code of conduct for local government employees, which would be incorporated into employees' terms and conditions of employment, is needed?**

As this question follows an unequivocal statement in the consultation paper of the justification for such a Code of Conduct, and the principle is enshrined in the Local Government Act 2000, one has to ask whether this is a genuine question.

The Council considers that a Code of Conduct going beyond the normal provisions of standard terms and conditions of employment is useful at least for senior officers, that it is sensible to incorporate it in contracts of employment by operation of law, and that the disciplinary process of the employing authority is the appropriate means of enforcement.

### 2.2 **Q14 – Should we apply the Employees' Code to fire-fighters, teachers, community support officers and solicitors?**

The Consultation Paper suggests that it may be unnecessary or inappropriate to apply the Employees' Code of Conduct to employees in professions that are already covered by their own Code.

The purpose of most professional codes of conduct is to secure the reputation of the profession, not to protect the integrity and governance of the employer. They may overlap in some aspects, but they are directed to different ends. By way of illustration, the Solicitors' Code of Conduct 2007 contains no provisions on such matters as the requirements for respect, for the registration of outside interests, the notification of gifts and hospitality or the avoidance of involvement in the appointment of relatives and friends, all of which were important elements of the 2004 draft Code.



Accordingly, it may be appropriate to provide that where an employee is subject to a Code of Conduct which is a precondition of the employee performing the functions of the post, the Employees' Code of Conduct shall not apply in so far as it is incompatible with that other code.

**2.3 Q15 – Are there any other categories of employee in respect of whom it is not necessary to apply the Code?**

In general terms, if relevant employees are excused provisions of the Code which are incompatible with professional codes, there is much less need to exclude specific categories of employee from the Code.

**2.4 Q16 – Does the employees' code for all employees 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?**

2.4.1 Drafting

A code of conduct is different from a set of general principles. If it is incorporated into a contract of employment, it needs to be clear and precise. For this purpose it should comprise a set of duties and prohibitions, drafted with sufficient precision that an employee can readily identify how the Code applies to him/her, and when a particular act or omission would amount to a breach of the code. The Members' Code does now broadly comprise such a set of rules. But much of the proposed Employees' Code is very discursive in style and imprecise in its effect. This is exemplified by contrasting the paragraph on "treatment of information" in the Employees' Code with Paragraph 4 in the Members' Code of Conduct.

2.4.2 Application to private life

As drafted, the Employees' Code applies in an employee's private life, prohibiting an employee from having personal interest which conflict with their professional duties, requiring political neutrality even in private life, and requiring the disclosure of personal information to the employer, and perhaps to the general public. Following the determination that the provisions of the Local Government Act 2000 in respect of the Members' Code did not apply in a member's private life in the absence of an express statement to that effect in the legislation, is CLG confident that the Local Government Act 2000 provides a sufficient basis for an Employees' Code to be prescribed which would apply to employees' private life?

2.4.3 The Consultation Paper fails to ask whether consultees consider that it is appropriate to have a two-tier code, with core rules applied to all relevant employees, and additional provisions which apply only to senior employees.

The Council considers that the main public interest would be satisfied by a Code of Conduct which applied just to senior employees. The proposed core rules are already covered to a greater or lesser extent by standards terms and conditions of employment. But if the decision



is taken that core elements of the code should apply to all employees, then it is more important to keep the core rules to an absolute minimum.

#### 2.4.4 Comparison with the Members' Code of Conduct

There would be considerable advantages in having commonality of language between the Members' and the Employees' Codes. Unfortunately the proposed Employees' Code appears to have been written with very little regard to the drafting of the existing or proposed Members' Codes. At the most basic level, the Members' Code is now written in the second person singular ("You must ..."), but the Employees' Code is written in the third person plural ("Employees must ...")

#### 2.4.5 Political neutrality

On the basis (see below) that the additional rules will apply to all politically restricted post-holders, the second sentence of the provision on political neutrality (which applies only to officers who hold politically restricted posts) is redundant in the core rules. Further, if the Employees' Code is to be kept to a minimum, it should avoid provisions which are simply a repetition of existing legal requirements. Accordingly, this provision should be deleted.

#### 2.4.6 Relations with members, the public and other employees

Whilst it would be nice if employees dealt sympathetically with members and others, it is unreasonable to suggest that employees should always have sympathy with those persons with whom they have to deal in the course of their employment. The requirement in the Members' Code to treat others with respect is much more appropriate, and unnecessary differences between the Members' and Employees' Codes should be avoided.

#### 2.4.7 Equality

The entirety of this provision is simply a duplication of the requirements to act lawfully and within the policies of the authority, and so should be deleted.

#### 2.4.8 Stewardship

The rest of the Employees' Code refers to "employees". This provision refers to "employees of relevant authorities." Consistent language should be used throughout the Code.

#### 2.4.9 Personal interests

The requirement not to allow personal interests and beliefs to conflict with professional duties is not matched in the Members' Code of conduct.



The phrase “personal interests” is here used in a very different manner from the use of the same phrase in the Members’ Code. This will cause confusion and should be avoided.

2.4.10 Gifts and hospitality

The Employees’ Code should make it clear that it only applies to gifts and hospitality which the employee receives by reason of their employment.

2.4.11 Whistle-blowing

The inclusion of a requirement to inform the employer of an failure by another employee to comply with the Employees’ Code is in stark contrast to the removal of the similar provision from the Members’ Code in the 2007 amendments. The Council has no difficulty in a duty to report illegality or failure to comply with the policies of the authority, but we consider that the requirement in respect of the model Members’ Code is too obviously at odds with the Members’ Code.

Further, if retained, any such requirement should be applied to any breach of the employing authority’s employee code, rather than just the provisions of the model Employees’ Code.

2.4.12 Treatment of information

As set out above, this paragraph illustrates the discursive nature of the drafting, rather than being a clear set of duties and prohibitions.

2.4.13 Investigations by the Monitoring Officer

Whilst Monitoring Officer investigations are important, it would be equally important to secure the employee’s co-operation with any statutory investigation, including the authority’s external auditors and the Police.

2.5 **Q17 – 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 delegation model will not work. Strictly all local authority employees act only under powers delegated to them by the authority. In fact, the only exception to this is the personal statutory duties of the three statutory officers, the Head of Paid Service, Chief Finance Officer and Monitoring Officer, who should most certainly come within any definition of “qualifying employees”. Further, the manner in which schemes of delegations to officers are drafted is markedly different in different authorities. Some detail specific statutory powers for relatively junior officers. At the other end of the spectrum, some give broad generic delegations to the Chief Executive, and then enable the Chief Executive to sub-delegate those powers to other officers.



On the other hand, the category of “politically restricted posts” provides a convenient and precise definition of the most senior employees and those who are most closely associated with the formal member-level decision-making processes. There is no perfect definition as to which employees should be subject to additional provisions of the Employees’ Code (or even to any provisions of the Employees’ Code if the decision were taken that it was not necessary for less senior employees). But the one definition which we have to hand, which works and which is broadly on target, is that of politically restricted posts.

**2.6 Q18 – Should the code contain a requirement for qualifying employees to publicly register any interests?**

2.6.1 Is it appropriate that senior employees should be required to register outside interests?

Whilst a requirement to register outside interests is a requirement to disclose personal information, and as such may only be required in accordance with Article 8 of the Human Rights Act 1998 and the Data Protection Act 1998 where it is necessary for the protection of the rights and freedoms of others and the protection of public morals, the Council believes that there is a justifiable case for requiring senior employees to disclose private interests.

2.6.2 Should there be a public right of access to the register of employees’ interests?

The matters which an employee will be required to register are matters in their private life. The requirement to register these interests with their employer is therefore an infringement of Article 8 of the Human Rights Act (Respect for private life, etc.) and potentially of the Data Protection Act 1998. Any public right of access to this personal information would be much more serious infringement of those rights of protection of private life and personal information, and should therefore only be granted if it is necessary for the protection of the rights and freedoms of others and the maintenance of public morals.

Since the Employees’ Code is imported into employees’ terms and conditions of employment and enforced through the employers’ disciplinary process, it must be questioned what wider public interest would be served by the publication of such information, especially if the categories of registered information were widened, as suggested below. It should also be noted that JNC terms and conditions of employment currently prohibit the employing authority from disclosing personal information about an employee without his/her consent. On that basis, the Council considers that the register of employee’s outside interests should not be open to public inspection.

A further question arises as to whether it should be open to inspection by all members of the employing authority. In the absence of express legislative provision, the view is taken that members would not have any automatic right of access to the register, but might make a specific enquiry in respect of a named officer where





they were able to demonstrate that they had a real need to know that information in order to discharge their functions as a member. Otherwise access would be limited to named employees in respect of only those employees for whom they had direct responsibility. The Council remains to be convinced that there is any justification for any change in that base position.

2.6.3 If the right of access to the register of employees' interests were limited in such a manner, there would be no need for a category of "sensitive information" to be disclosed but then omitted from the register.

2.7 **Q19 – Do the criteria of what should be registered contain any categories which should be omitted, or omit any categories which should be included?**

2.7.1 As set out above, the use of nominal values of securities produces a very arbitrary result, as pointed up by the current volatility of security values. As a result it would be better now to move to "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 the securities of that person or body that exceeds a nominal value of £25,000, a current market value of £25,000 or one hundredth of the total issued share capital".

Without these provisions, the requirements of the Employees' Code will be significantly less onerous than the requirements of Section 117 of the Local Government Act 1972, which requires the disclosure of all pecuniary interests (although the definition of "pecuniary interest" would appear to have been repealed on the adoption of the first Members' Code in 2001).

2.7.2 The consultation paper contains no justification for omitting from the requirement to register under the Employees' Code particular categories of interest which are registrable under the Members' Code, including:

- Membership or a position of general control or management of outside bodies to which you have been appointed by the authority
- Membership or a position of general control or management of public authorities
- Membership or a position of general control or management of a body directed to charitable purposes
- Membership or a position of general control or management in a body the principal purposes of which include influencing public opinion or policy
- Any other employment or business carried on by you
- Any gifts and hospitality with a value greater than £25 which you have received by reason of your employment
- Any tenancy of the authority's property
- Any and in the authority's area which you occupy for 28 days or more.



Other employment or business, membership of pressure groups, the holding of other remunerated employment in the gift of the authority, and the receipt of gifts and hospitality by reason of your employment would appear to be of real interest, and should most certainly be included in the list of registrable interests. Thus, for example, it would be of serious concern if a senior finance officer was employed in their spare time by a financial consultancy which was seeking or had existing consultancy contracts with the authority, or was running a spare-time consultancy in such an area, if a senior planning officer of an authority were a member of a pressure group which had aims and objectives which were incompatible with the adopted planning policies of the authority, or an officer in charge of procurement were in receipt of significant gifts and hospitality from potential contractors with the authority.

**2.8 Q20 – 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?**

2.8.1 The omission of any class of “personal interests” requiring disclosure to the authority, whether or not some of them require registration, means that the Employees’ Code is not only seriously out of line with the Members’ Code, but also means that it fails to recognise the provisions of Section 117 of the Local Government Act 1972. Accordingly, employees will need not just to refer to the Employees’ Code, but also to Section 117. This confusion can be avoided by including in the Employees’ Code a requirement to notify the authority of any “personal interest”, defining “personal interest” in such a manner that it includes not only “registrable interests”, but also any interests which must be disclosed under Section 117, and in the process removing the difficulty caused by the repeal of the definition of “pecuniary interest”.

2.8.2 Secondly, because the draft Employees’ Code is written in very different and less precise language by comparison with the Members’ Code, it simply is not possible to do a line-by-line comparison of both codes and their impact.

2.8.3 However, the suggestion that officers with a prejudicial interest should “wherever possible ... take steps to avoid influential involvement in the matter” is completely at odds with the strict prohibition on member participation in a matter in which they have a prejudicial interest.

**2.9 Q21 – 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?**

2.9.1 The proposed requirement for employees to consider advice provided to them and giving reasons is unnecessary. In the first place, the text is inconsistent with the title, as the text makes no reference to giving reasons for decisions and/or actions. In the second place, it is entirely up to an individual employee as to whether





he/she chooses to pay any attention to such advice, or to risk the penalties which may flow from ignoring it. Thirdly, no similar provision is contained in the Members' Code of Conduct.

- 2.9.2 The requirement to register interests with the authority's Monitoring Officer is at odds with the standard practice of authorities, where the register is normally held by the Head of HR. At the very least, the provision should require registration with "the Monitoring Officer or such other officer as he/she may designate for this purpose".

2.10 **Q22 – Should the employees' code extend to employees of parish councils?**

As set out above, there is little justification for legislating to require that relatively junior employees of a local authority be subject to any mandatory code provisions. It is always open to an authority to introduce such provisions as part of the authority's terms and conditions of employment. On that basis, and given the relatively lower pay levels of parish council employees and the very limited policy and regulatory functions of parish councils, the Council considers that the Employees' Code should be discretionary rather than mandatory for parish councils.

2.11 **Should authorities be required to incorporate the exact words of the employees' code into contracts of employment?**

*[The Council has already included in its standard terms and conditions of employment particular terms and conditions which cover some or all of the points contained in the draft Employees' Code, and in some cases actually go rather further. Many of those provisions are drafted in a manner different from the draft Employees' Code, and simply grafting the exact wording of the Employees' Code into such terms and conditions will produce contradictions and confusion.]* Accordingly, any statutory instrument prescribing the Employees' Code should provide that all relevant authorities must incorporate into their terms and conditions of employment provisions of no less effect than the Employees' Code, rather than necessarily the exact words and nothing more than the exact words of the Employees' Code.

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## 2008/2009 Work Plan for Standards Committee

### Ongoing Activities

Local assessment of complaints  
Standards Board Guidance  
Member and Officer Training

### Programme of New Work

<u>Programme of New Work</u>	<u>Meeting Date</u>	<u>Notes</u>
Follow-up on ethical governance workshops – Review of Member / Officer Protocol	14 November 2008	As discussed at meeting on 18 July 2008
Review of the profile and operation of the Standards Committee within the Council, and raising the profile of ethical issues generally.	14 November 2008	As discussed at meeting on 18 July 2008
Review of the Officer Code of Conduct	23 January 2009	As discussed at meeting on 18 July 2008

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