

A G E N D A

Standards Committee

Date: **Friday, 17th October, 2008**

Time: **2.00 p.m.**

Place: **The Council Chamber, Brockington, 35
Hafod Road, Hereford**

Notes: Please note the **time, date** and **venue** of the meeting.

For any further information please contact:

Heather Donaldson, Democratic Services

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Herefordshire Council



HEREFORDSHIRE
COUNCIL

AGENDA

for the Meeting of the Standards Committee

To: Robert Rogers (Independent Member)(Chairman)

Richard Gething (Parish and Town Council Representative)
 John Hardwick (Parish and Town Council Representative)
 David Stevens (Independent Member)
 John Stone (Local Authority Representative)
 Beris Williams (Local Authority Representative)

Pages

1. APOLOGIES FOR ABSENCE

To receive apologies for absence.

2. DECLARATIONS OF INTEREST

To receive any declarations of interest by Members in respect of items on the Agenda.

3. MINUTES

To approve and sign the minutes of the meeting held on 04 July 2008.

4. STANDARDS BOARD FOR ENGLAND/HEREFORDSHIRE ASSOCIATION OF LOCAL COUNCILS JOINT PILOT PROJECT

To receive a presentation from the Chief Executive of HALC on the joint SBE/HALC Pilot Project, and to identify areas of involvement for the Standards Committee.

Wards: County Wide

5. APPLICATIONS FOR DISPENSATIONS RECEIVED FROM PARISH AND TOWN COUNCILS

To consider applications for dispensations received from parish and town councils.

Wards: County Wide

(Note: At the time that this agenda went to print, no applications had been received. If any applications for dispensations are received before the meeting, an oral report will be given.)

6. **CONSULTATION PAPER: "COMMUNITIES IN CONTROL: REAL PEOPLE, REAL POWER CODES OF CONDUCT FOR LOCAL AUTHORITY MEMBERS AND EMPLOYEES** 5 - 46

To consider a response to the Department of Communities and Local Government's consultation paper.

Wards: County Wide

7. **CODE OF CORPORATE GOVERNANCE** 47 - 56

To note the Council's revised Code of Corporate Governance, approved by the Audit and Corporate Governance Committee, and make any final recommendations to Council.

Wards: County Wide

8. **STANDARDS COMMITTEE HEARING ARRANGEMENTS**

To consider a proposed Committee and officers' guide on the arrangements for local determination hearings.

Wards: County Wide

(Note: this report will be sent "To Follow")

9. **ASSESSMENT CRITERIA: ANONYMOUS COMPLAINTS** 57 - 64

To approve criteria for dealing with anonymous complaints received about local authority, town and parish councillors.

Wards: County Wide

10. **SEVENTH ANNUAL ASSEMBLY OF STANDARDS COMMITTEES**

To receive an oral report from the members who attended the Annual Assembly of Standards Committees held at the International Conference Centre in Birmingham on 13 and 14 October 2008.

Wards: County Wide

11. **STANDARDS BOARD FOR ENGLAND BULLETIN 40** 65 - 72

To consider the latest bulletin from the Standards Board for England.

Wards: County Wide

EXCLUSION OF THE PUBLIC AND PRESS

In the opinion of the Proper Officer, the following item will not be, or is likely not to be, open to the public and press at the time it is considered.

RECOMMENDATION: that under section 100(A)(4) of the Local Government Act 1972, the public be excluded from the meeting for the following item of business on the grounds that it involves the likely disclosure of exempt information as defined in Schedule 12(A) of the Act, as indicated below

12. EXPERIENCE OF LOCAL FILTER CASES, AND DETERMINATIONS SO FAR 73 - 96

- To update the Committee about progress made with complaints about local authority, town and parish councillors during the period 08 May 2008 to the present.
- To review the local filter and determinations process, and consider resource implications.

Wards: County Wide

(This item contains information which is subject to an obligation of confidentiality)

13. PROCEDURES FOR RECRUITMENT OF INDEPENDENT MEMBERS 97 - 108

To consider the appointment of independent member to the Standards Committee.

Wards: County Wide

(This item contains information which is subject to an obligation of confidentiality)

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- Inspect background papers used in the preparation of public reports for a period of up to four years from the date of the meeting. A list of the background papers to a report is given at the end of each report. A background paper is a document on which the officer has relied in writing the report and which otherwise is not available to the public.
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If you have any questions about this agenda, how the Council works or would like more information or wish to exercise your rights to access the information described above, you may do so either by telephoning officer named on the front cover of this agenda or by visiting in person during office hours (8.45 a.m. - 5.00 p.m. Monday - Thursday and 8.45 a.m. - 4.45 p.m. Friday) at the Council Offices, Brockington, 35 Hafod Road, Hereford.

COUNTY OF HEREFORDSHIRE DISTRICT COUNCIL

BROCKINGTON, 35 HAFOD ROAD, HEREFORD.

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

1 October 2008

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

The Clerk of:
Parish and Town Councils in England

Dear Colleague,

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

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

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

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

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

Paul Rowsell, Deputy Director, Local Democracy
Communities and Local Government
5/A1, Eland House
Bressenden Place
London SW1E 5DU

Tel 020 7944 5962 Fax 020 7944 4109
Email:conductcode@communities.gsi.gov.uk

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Conduct and Council Constitutions Team
Communities and Local Government
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Bressenden Place
London
SW1E 5DU

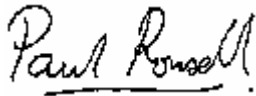
Or by e-mail to: conductcode@communities.gsi.gov.uk

By **Wednesday 24 December 2008**.

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

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

Yours sincerely

A handwritten signature in black ink that reads "Paul Rowsell". The signature is written in a cursive style and is underlined.

Paul Rowsell

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



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

October 2008

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Chapter 1: The consultation and how to respond

Communities in control consultation papers

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

About this consultation

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

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

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

Who are we consulting?

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

How to respond

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

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

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

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

What will happen to the responses?

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

Publication of responses – confidentiality and data protection

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

The consultation criteria

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

Additional copies

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

In context – previous consultations and relevant legislation

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

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

Code of conduct for local government employees

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

Chapter 2: Code of conduct for local authority members

What is the code of conduct for?

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

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

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

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

Consultation Question 1:

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

Definition of 'criminal offence' and 'official capacity'

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

Consultation Question 2:

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

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

Consultation Question 3:

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

Offending abroad

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

Consultation Question 4:

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

What does this mean?

- 2.16 Our proposals would have the effect of providing that the only conduct in a member's non-official capacity which is engaged by the code, is conduct which constitutes a criminal offence, as defined in paragraph 2.10 above. The code may only then be applied to that conduct when the evidence that the member's conduct constituted a criminal offence is provided by the criminal conviction of the member in the courts.
- 2.17 This would mean, for example, that a member who was convicted of a criminal offence of assault or harassment could be held to have breached the code, even if the conduct, which led to the conviction took place entirely outside the member's official capacity.

Criminal conviction of a member

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

The conduct regime

- 2.19 At present, investigations into alleged breaches of the members' code are triggered by a written allegation made to the standards committee of the local authority concerned. We propose that this continue to be the case when dealing with allegations of misconduct in relation to a member's conduct in their non-official capacity.
- 2.20 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the standards committee or the

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

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

Consultation Question 5:

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

Proposed revisions to the members' code

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

Parish councils

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

Membership of other bodies

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

Personal interests

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

Prejudicial interests

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

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

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

Registration of members' interests

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

Consultation Question 6:

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

Consultation Question 7:

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

Consultation Question 8:

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

Legislative context

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

Consultation Question 9:

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

Proposed amendments to the General Principles

What are the General Principles?

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

The General Principles

Selflessness

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

Honesty and Integrity

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

Objectivity

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

Accountability

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

Openness

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

Personal Judgement

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

Respect for Others

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

Duty to uphold the law

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

Stewardship

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

Leadership

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

Proposed revisions

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

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

Duty to abide by the law

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

Consultation Question 10:

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

Definition of 'criminal offence' and 'official capacity'

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

Consultation Question 11:

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

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

Consultation Question 12:

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

Legislative Context

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

Chapter 3: Model code of conduct for local government employees

Is an employees' code needed?

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

Consultation Question 13:

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

The employees' code in context

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

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

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

Application of the employees' code

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

Consultation Question 14:

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

Consultation Question 15:

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

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

Proposed core values

The model employees' code: core values for all employees

General principles

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

Accountability

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

Political neutrality

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

Relations with members, the public and other employees

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

Equality

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

Stewardship

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

Personal interests

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

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

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

Whistleblowing

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

Treatment of Information

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

Appointment of staff

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

Investigations by monitoring officers

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

Consultation Question 16:

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

Beyond the core values

Who are the 'qualifying employees'?

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

Consultation Question 17:

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

The model employees' code: values for qualifying employees

Compromising the impartiality of officers of the authority

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

Using your position improperly

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

Considering advice provided to you and giving reasons

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

Personal interest

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

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

These are:

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

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

Consultation Question 18:

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

Consultation Question 19:

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

Prejudicial interest

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

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

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

Consultation Question 20:

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

Consultation Question 21:

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

Contractors, partners and part time staff

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

Parish councils

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

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

Consultation Question 22:

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

Legislative context

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

Annex A: List of consultation questions

Chapter 2: Code of conduct for local authority members

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

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

Chapter 3 Model Code of Conduct for local authority employees

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

Annex B

SCHEDULE

THE MODEL CODE OF CONDUCT

Part 1

General provisions

Introduction and interpretation

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

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

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

(4) In this Code—

“meeting” means any meeting of—

(a)

the authority;

(b)

the executive of the authority;

(c)

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

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

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

Scope

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

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

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

and references to your official capacity are construed accordingly.

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

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

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

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

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

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

General obligations

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

(2) You must not—

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

(b) bully any person;

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

(i) a complainant,

(ii) a witness, or

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

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

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

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

4. You must not—

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

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

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

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

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

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

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

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

6. You—

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

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

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

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

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

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

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

(b) your authority's monitoring officer,

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

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

Part 2 Interests

Personal interests

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

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

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

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Disclosure of personal interests

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

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

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

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

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

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

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

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

Prejudicial interest generally

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

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

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

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

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

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

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

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

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

(v) any ceremonial honour given to members; and

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

Prejudicial interests arising in relation to overview and scrutiny committees

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

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

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

Effect of prejudicial interests on participation

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

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

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

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

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

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

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

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

Part 3

Registration of Members’ Interests

Registration of members’ interests

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

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

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

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

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

Sensitive information

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

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

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

Annex C: Consultation Code of Practice

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

The Consultation Criteria

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

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

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

email: consultationcoordinator@communities.gsi.gov.uk

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REVIEW OF THE CODE OF CORPORATE GOVERNANCE**Report By: Assistant Chief Executive - Legal and Democratic****Wards Affected**

County Wide.

Purpose

1. To consider and agree a revised Code of Corporate Governance for the Council following the issuing of a new governance framework and guidelines.

Financial Implications

2. None arising as a direct result of this report.

Recommendations

3. **THAT:**
 - (a) **The Standards Committee agrees the redrafted Code of Corporate Governance and Foreword for adoption by Council on 31 October 2008.**

Background

4. The Committee will recall considering a revised Code of Corporate Governance at its meeting on 4 July 2008, which the Vice Chairman of the Audit and Corporate Governance Committee had attended and had communicated the views of that Committee.
5. The Standards Committee had agreed that two main factors needed to be addressed and clarified to ensure the robustness of the Code of Corporate Governance;
 - (i) The Code needed to be simpler, easier to use and written in an appropriate form and style in order that it engaged with, and was accessible to, the people of Herefordshire.
 - (ii) The Code should not mix statements of principle and aspirations (appropriate to a Code) with that of compliance reporting.

Further information on the subject of this report is available from Alan McLaughlin,
Assistant Chief Executive Legal and Democratic Services
on tel: (01432 260200)

6. The Standards Committee acknowledged that the revised Code of Corporate Governance had been prepared according to CIPFA/SOLACE guidance and was mindful that, were the Herefordshire Code to depart substantially from national guidance, it would be necessary to ensure that the Code met the requirements of CIPFA/SOLACE by seeking their view on this matter.
7. The Standards Committee undertook to redraft of the Code of Corporate Governance which would take account of the agreed approach of both the Audit and Corporate Governance Committee and Standards Committee and would be considered at the respective Committee meetings scheduled for 25 September and 17 October 2008.
8. The attached redraft has been produced by Mr Robert Rogers, the Chairman of the Standards Committee and has been circulated to the members of the Standards Committee and the Chairman and Vice Chairman of the Audit and Corporate Governance. Suggested amendments received from members to the redraft have been included in the version as agreed by Mr Rogers.
9. The principle of the redrafted document is that it forms a comprehensible contract between the Council and the people of Herefordshire. It is acknowledged that should more practical guidance be required within the Council about how the Code's aspirations are to be put into effect, a parallel commentary/instructions could be prepared, and may be necessary to secure CIPFA/SOLACE endorsement/compliance.
10. Within the redrafted Code, the six principles have been reduced to five, because it was considered that that Member/Officer co-operation was sufficiently close to issues of capability for the two to be combined.
11. The formal approval for the redrafted Code of Corporate Governance was sought from the Audit and Corporate Governance Committee on 25 September 2008, and the Committee agreed the following:

That, subject to any supplemental or commentary instructions to the Code of Corporate Governance being submitted by officers to the Audit and Corporate Governance Committee for ratification and subsequent approval by Council, the redrafted Code of Corporate Governance be agreed for consideration by the Standards Committee for onward adoption by Council on 31 October 2008.
12. The Standards Committee is therefore requested to consider this final draft as approved by the Audit and Corporate Governance Committee – for completeness, including the Foreword which had been previously approved by the Standards Committee on 13 April 2007 - for onward submission to the meeting of Council on 31 October 2008.

Further information on the subject of this report is available from Alan McLaughlin,
Assistant Chief Executive Legal and Democratic Services
on tel: (01432 260200)

Reasons

13. To meet the requirements of Accounts and Audit Regulations 2003 (as amended) and to ensure governance arrangements continue to meet best practice.
14. An annual review of the Code of Corporate Governance will be conducted to produce an Annual Governance Statement, in order to formally meet audit and accounting regulations.

Risk Management

15. The Code of Corporate Governance is needed to meet the requirements of the Audit and Accounts Regulations 2003 (as amended) and to ensure that governance arrangements continue to meet best practice

Background Papers

Cabinet Report – 27 March 2008: Annual Governance Statement 2008

Audit and Corporate Governance Agenda Papers – 3 July 2008

Standards Committee Agenda Papers – 4 July 2008

Appendices

Appendix 1 – Foreword to the Code of Corporate Governance

Appendix 2 – Redrafted Code of Corporate Governance, as revised by the Standards Committee and approved by the Audit and Corporate Governance Committee.

Further information on the subject of this report is available from Alan McLaughlin,
Assistant Chief Executive Legal and Democratic Services
on tel: (01432 260200)

Code of Corporate Governance

FOREWORD

Herefordshire Council must meet high ethical and other standards in everything it does; it must comply with legal requirements; and it must use public money and other resources economically, efficiently and effectively, accounting fully for its actions.

In order to discharge these responsibilities, Members and senior Officers must ensure the proper governance of the Council's affairs and the stewardship of its resources.

The Council has therefore adopted a Code of Corporate Governance, which observes the requirements of the framework *Corporate Governance in Local Government: a keystone for Community Governance*, approved by the Chartered Institute of Public Finance and Accountancy and the Society of Local Authority Chief Executives.

The Council's Director of Resources is responsible for the effective application of the Code in matters of financial probity, performance and risk.

The Council's Head of Legal and Democratic Services, and Monitoring Officer, is responsible for the effective application of the Code in respect of legal obligations and ethical standards.

Each will make an annual report on the effectiveness of the Code to the Audit and Corporate Governance Committee, and to the Standards Committee, respectively.

As part of its efforts further to improve standards of governance, the Council will itself carry out an annual review of the effectiveness of the Code.

HEREFORDSHIRE COUNCIL'S CODE OF CORPORATE GOVERNANCE

Introduction

1. Herefordshire Council must meet high ethical and other standards in everything it does; it must comply with legal requirements; it must serve the people of Herefordshire well; and it must use public money and other resources economically, efficiently and effectively, accounting fully for its actions.
2. This Code of Corporate Governance sets out the Council's promise to the people of Herefordshire about how this will be done.

Responsibilities

3. All Members and Officers have a responsibility to ensure the proper governance of the Council's affairs and the stewardship of its resources. In particular, under the overall responsibility of the Chief Executive, the Council's Director of Resources is responsible for the effective application of the Code in matters of financial probity, performance and risk; and the Assistant Chief Executive (Legal and Democratic Services) is responsible for the effective application of the Code in respect of legal obligations and ethical standards.

Reporting

4. The Council will report annually on its compliance with this Code. That report will draw upon reports by the Director of Resources to the Audit and Corporate Governance Committee, and by the Assistant Chief Executive (Legal and Democratic) to the Standards Committee, and upon the opinions of those Committees.

The principles of this Code

5. This Code follows five principles of good governance:
 - Provide the best possible service to the people of Herefordshire
 - Define the roles of Members and Officers, ensure that they work together constructively, and improve their effectiveness
 - Require high standards of conduct
 - Take sound decisions on the basis of good information
 - Be transparent and open: responsive to Herefordshire's needs and accountable to its people.
6. The rest of this Code demonstrates how the Council will put these principles into action.

Provide the best possible service to the people of Herefordshire

7. The Council will

- Set out a strategic vision for the County, and its intended outcomes for citizens
- Provide high quality services representing excellent value for money;
- Develop and sustain effective partnerships
- Encourage public participation in Herefordshire local government
- Identify and manage risk
- Make environmental impact a key part of decision-making at all levels
- Measure performance rigorously and improve it where necessary

Define the roles of Members and Officers, ensure that they work constructively together, and improve their effectiveness

8. The Council will
- Encourage and support effective leadership, and constructive working relationships, at all levels
 - Make clear the roles of Members and Officers, the way in which decisions are taken, and the nature and limits of delegated authority
 - Determine remuneration in a transparent and open way, with recommendations on Members' allowances made independently
 - Ensure that Members and Officers have the training and support they need to be effective; that their performance is appraised; and that development needs are addressed

Require high standards of conduct

9. The Council will
- Create and maintain a climate of openness, and mutual support and respect
 - Ensure that Members and Officers display consistently high standards of conduct
 - Be punctilious in ensuring that governance and decision-making reflects these high standards
 - Take effective action on “whistleblowing”: complaints based on matters of propriety and conscience
 - Support an effective Standards Committee

Take sound decisions on the basis of good information

10. The Council will
- Be open about how and why decisions are taken

- Demonstrate and record the evidence and analysis underpinning decisions
- Enable and support effective scrutiny of those decisions
- Guard against any conflict of interest
- Support an effective Audit and Corporate Governance Committee

Be transparent and open: responsive to Herefordshire's needs and accountable to its people

11. The Council will

- Be open about its actions and plans, subject to the requirements of the law or of personal or commercial confidentiality
- Give a high priority to communicating and explaining its policies
- Respond readily to public needs and aspirations
- Take prompt and effective action on complaints
- Publish a comprehensive annual report on this Code
- Review this Code regularly and revise it in the light of experience

ASSESSMENT CRITERIA: ANONYMOUS COMPLAINTS**Report By: Assistant Chief Executive - Legal and Democratic****Wards Affected**

County Wide.

Purpose

1. To consider and agree criteria for dealing with anonymous complaints received about local authority, town and parish councillors.

Financial Implications

2. None arising as a direct result of this report.

Recommendations

3. **THAT:**
 - (a) **The Standards Committee agrees the criteria, as recommended by the Standards Board for England, and set out in this report, for dealing with anonymous complaints about local authority, town and parish councillors, and includes it in the adopted guidance "Assessment and Review Criteria of Herefordshire Council Standards Committee".**

Background

4. The Committee will recall considering a report at its meeting on 04 July, 2008 entitled: "Local Assessment – Initial Handling of Complaints". The Committee agreed to adopt local guidance to be made available to the public, entitled "Assessment and Review Criteria of Herefordshire Standards Committee". This guidance is enclosed at Appendix 1.
5. Paragraph 3 of the guidance gives advice about what sort of complaints can be considered. In addition to this guidance, it is also necessary for the Standards Committee to decide and publish a procedure for dealing with anonymous complaints. It is suggested that this procedure be included with the existing guidance, as an additional paragraph following Paragraph 3.
6. The Standards Board for England (SBE) refers to anonymous complaints on Pages 25 and 26 of its publication: "Local Assessment of Complaints". It states:

Further information on the subject of this report is available from Alan McLaughlin,
Assistant Chief Executive Legal and Democratic Services
on tel: (01432 260200)

“Authorities should publish a statement setting out how complaints received anonymously will be dealt with. The Assessment Sub-Committee may decide that an anonymous complaint should only be referred for investigation or some other action if it includes documentary or photographic evidence indicating an exceptionally serious or significant matter. If so, this needs to be included in the Standards Committee’s assessment criteria.”

7. The SBE guidance appears to imply that the Assessment Sub-Committee should consider anonymous complaints as a matter of course. **The issue to be decided, therefore, is under what circumstances anonymous complaints can be referred for investigation or some other action.**

Reasons

8. To ensure that the Standards Committee and its Sub-Committees have a complete, robust and sound procedure for dealing with all forms of complaints about councillors, which is available to the public.

Risk Management

9. The publication of guidance on anonymous complaints is needed to meet the requirements of Standards Committee (England) Regulations 2008.

Background Papers

Standards Committee Agenda Papers – 4 July 2008

Appendices

Appendix 1 – Assessment and Review Criteria of Herefordshire Council Standards Committee

Assessment and Review Criteria of Herefordshire Council Standards Committee

1. Introduction

This paper sets out the criteria which the Assessment Sub-Committee will apply in conducting the initial assessment of failure by members to observe the Code of Conduct.

The authority takes all allegations of member misconduct extremely seriously and seeks to secure the highest standards of conduct at all times. The initial assessment process determines whether the complaint appears to show that there has been a breach of the Code of Conduct, and then whether the complaint should be subject to a formal investigation (either by the Standards Board for England or locally under the direction of the authority's Monitoring Officer), whether the authority's Monitoring Officer should be directed to take other appropriate actions in respect of the complaint, or whether no action should be taken in respect of the complaint.

2. Local resolution of complaints

The Standards Committee is acutely aware that the formal investigation of complaints is costly and time consuming. Whilst formal investigation may be necessary in some cases, many complaints can often be dealt with more rapidly and effectively if an early, informal resolution of the matter can be achieved.

The Standards Committee has instructed the Monitoring Officer, where a complaint has been received, to explore the potential for local resolution to the satisfaction of the complainant, to avoid the need for a formal investigation. But any attempts at local resolution do not take away the right of a complainant to have their complaint of member misconduct considered by the Sub-Committee.

3. Which complaints can be considered?

The Assessment Sub-Committee must consider every complaint that a member of the authority (or of any Parish or Town Council within its area) has failed to comply with the Code of Conduct which that authority has adopted. Accordingly, it has no jurisdiction in respect of any complaint which relates to:

- (a) persons who are not members of the authority (or a Parish or Town Council in its area).
- (b) conduct which occurred at a time when the person against whom the complaint was made was not a member of the authority (or of a Parish or Town Council in its area).
- (c) conduct which occurred before the relevant authority adopted a Code of Conduct. In practice, the Sub-Committee will expect complaints to be made promptly after the events to which they relate (see below).
- (d) conduct which occurred in the member's private life, as the Code of Conduct only applies to a member's conduct as a member of a local authority.

- (e) conduct which occurred when the member was acting as a member of another authority. Where a member is also a member of another authority (other than a Parish or Town Council within its area) which has its own Code of Conduct, then the complaint should be addressed directly to that authority.
- (f) complaints which do not relate to the apparent misconduct of a relevant member but are, for example, about the policies and priorities of the authority, or are a request for the provision of a service by the authority, or are a complaint about the conduct of an officer of the authority.

Such complaints will not be referred to the Assessment Sub-Committee but will instead be dealt with by the Monitoring Officer who will advise the complainant as to the most appropriate avenue for proper consideration of their complaint or request.

4. Does the complaint appear to show a breach of the Code of Conduct?

The first assessment which will be undertaken by the Sub-Committee will be to determine whether the complaint appears to show that a breach of the Code of Conduct may have occurred.

For this purpose, the Sub-Committee will take into account the complaint letter and any other information which is readily available to them. Accordingly, it is the responsibility of a complainant to set out clearly:

- (a) who the complaint is against
- (b) what they understand that the relevant member did
- (c) why they consider that the member's conduct amounted to a breach of the Code of Conduct

And to provide copies of any documents which they want the Sub-Committee to consider.

Following receipt of your complaint, the Monitoring Officer will collect any other information which is readily available and which may assist the Sub-Committee in its consideration of the complaint. This will not include conducting interviews with witnesses, but may include providing the Sub-Committee with copies of the agenda, report and minutes of a meeting of the authority at which the alleged misconduct occurred, or providing copies of the member's entry in the register of members' interests.

The Sub-Committee will then consider whether, on the basis of the complaint and that additional information, there appears to have been a breach of the Code of Conduct.

If the Sub-Committee concludes that the evidence does not disclose an apparent breach of the Code of Conduct, it has no further jurisdiction in respect of the matter. The complainant will be informed in writing that no investigative further action will be taken in respect of the complaint.

5. Possible actions where an apparent breach of the Code of Conduct has occurred

Where the Sub-Committee has concluded that there appears to have been a breach of the Code of Conduct, it has four options available to it. These are as follows:

(a) direct the Monitoring Officer to secure that the complaint is investigated locally

A local investigation will normally be appropriate where the alleged conduct is sufficiently serious to merit the imposition of a sanction against the member, but not so serious that it would merit a greater sanction that the authority's Standards Committee could impose following a formal hearing. In practice, this means that a local investigation would not be appropriate where the appropriate sanction is likely to be a suspension as a member of the relevant authority for a period of more than 6 months, or disqualification as a member of any local authority. See paragraph 5(b) below for more detailed grounds for referring a complaint to the Standards Board for England.

However, recognising that a formal investigation is an expensive and time-consuming process, and can only address the immediate subject matter of the complaint, the Sub-Committee can direct the Monitoring Officer to take other appropriate action short of a formal investigation – see paragraph 5(c) below.

In addition, particularly where the conduct complained of is not sufficiently serious to merit any action or occurred a considerable time ago, the Sub-Committee may determine that no action should be taken in respect of it. For more detail, see paragraph 5(d) below.

(b) refer the matter to the Standards Board for England with a request that the Board undertakes a national investigation into the complaint

The following factors will be considered by the Sub-Committee to be factors which support referring the complaint to the Standards Board for England for a national investigation:

- (i) that the complaint is so serious that, if proven, the conduct complained of merits a sanction in excess of that which could be imposed by the Standards Committee. In practice this means that the appropriate sanction would be either a suspension from the relevant authority for a period of more than 6 months, or a disqualification from any local authority.
- (ii) that the investigation required is so extensive that it would impose an unreasonable burden on the authority and/or that any hearing conducted on the basis of that investigation would be unreasonably complex for the Standards Committee.
- (iii) that the status of the member against whom the complaint has been made or the person by whom the complaint has been made is such that either the authority could not conduct a full and impartial investigation and hearing, or that there is likely to be a

public perception that the authority could not conduct a full and impartial investigation and hearing.

- (iv) that so many members of the Standards Committee have a conflict of interest in respect of the matter that the authority is going to be in difficulty in organising an impartial Hearings panel for the matter.
- (v) that the complaint raises significant or unresolved legal issues where a national ruling would be helpful.
- (vi) that the authority itself has an interest in the outcome of the investigation and/or hearing, for example where the report may lead to a judicial review of a decision of the authority.
- (vii) that there are other exceptional circumstances which would prevent the authority from securing a timely, full and impartial investigation and/or hearing of the matter, or which are likely to give rise to the perception that the authority cannot secure a timely, full and impartial investigation and/or hearing of the matter.

(c) direct the Monitoring Officer to take other appropriate action short of a formal investigation;

The Assessment Sub-Committee cannot impose a sanction on the member against whom the complaint has been made without a formal investigation and hearing. But it can direct the Monitoring Officer to take a range of other actions, including providing training for members, securing conciliation or mediation between competing interests, or reviewing procedures to minimise conflict.

In some instances, the conduct complained of may be a symptom of wider conflicts within the authority. A formal investigation and hearing would only deal with the particular complaint and may not resolve such underlying conflicts.

Such alternative action is therefore most suitable where:

- (i) the conduct complained of is a symptom of wider underlying conflicts which, if unresolved, are likely to lead to further misconduct or allegations of misconduct.
- (ii) the conduct complained of is apparently common to a number of members of that authority, demonstrating a lack of awareness or recognition of the particular provisions of the Code of Conduct
- (iii) the conduct complained is of not so serious that it requires a substantive formal sanction such as suspension or disqualification
- (iv) the complaint reveals a lack of guidance, protocols and procedures within the authority, for example on the use of resources or the process of decision-making
- (v) the member complained of and the person making the complaint are amenable to engaging in such alternative action, as there is no power to require them to participate

(d) decide to take no action in respect of the complaint

The following factors are likely to lead the Sub-Committee to decide to take no action in respect of the matter:

- (i) the complaint appears to be trivial, vexatious, malicious, politically motivated or tit for tat.
- (ii) the complaint is anonymous. The Sub-Committee can protect the confidentiality of the identity of the complainant where that is justified by a real fear of intimidation or victimisation. However where this is not an obvious risk, the fact that the complainant has not disclosed her/his identity can indicate that the complaint is less serious, is malicious or is potentially motivated
- (iii) a significant period of time has elapsed since the events which are the subject of the complaint. This is both because, where a matter is serious, it would be reasonable to expect the complainant to make a complaint promptly, and because the passage of time may make it more difficult to obtain documentary evidence and reliable witness evidence
- (iv) the complaint is such that it is unlikely that an investigation will be able to come from a firm conclusion on the matter. This could be where the matter is such that there is unlikely to be any firm evidence on the matter

6. Confidentiality

As a matter of fairness and natural justice, a member should usually be told who has complained about them and what the complaint is about. There may be occasions where the complainant requests that their identity is withheld. Such a request should only be granted in circumstances which the Assessment Sub-Committee considers to be exceptional, for example:-

- (a) the complainant has reasonable grounds for believing that he/she will be at risk of physical harm if his/her identity is disclosed
- (b) the complainant is an officer who works closely with the member and they have a reasonable fear of intimidation or victimisation if their identity is disclosed.
- (c) the complainant suffers from a serious health condition which might be adversely affected if his/her identity is disclosed. The Assessment Sub-Committee may wish to request medical evidence

7. Withdrawing complaints

Where the complainant purports to withdraw the complaint before the Assessment Sub-Committee has had the opportunity to take a decision on it, the Sub-Committee will consider whether to accept such withdrawal.

- (a) Where the complainant submits further evidence demonstrating that the complaint was ill-founded, it may be appropriate for the Sub-Committee

formally to resolve that the complaint as amended shows no evidence of a breach of the Code of Conduct, so that the matter is formally concluded.

- (b) Where the alleged misconduct is simply a matter of alleged failure on the part of the respondent to treat the complainant with respect, and raises no wider issues of public interest, the Sub-Committee will normally accept such withdrawal.
- (c) However where the complaint raises issues of wider public interest, it may be appropriate for the Sub-Committee to ensure that such wider issues are formally investigated and resolved.

8. Review

Where the Assessment Sub-Committee has resolved to take no action in respect of a matter (that is, not to refer the matter to the Standards Board for England for investigation, and not to refer the matter to the Monitoring Officer either for investigation or for other appropriate action), the complainant may request the Review Sub-Committee to review the decision of the Assessment Sub-Committee

Such a review shall be conducted in two stages:

- (a) First, the Review Sub-Committee will determine whether the original decision of the Assessment Sub-Committee was unreasonable on the basis of the information available to the Assessment Sub-Committee at the time of its decision and in accordance with these approved criteria for assessment. This review shall be conducted on the basis of the original complaint, the Monitoring Officer's report to the Assessment Sub-Committee, the decision noting of the Assessment Sub-Committee and any information contained within the complainant's request for a review. Note that this is a review of the initial decision, rather than considering it again from the beginning.
- (b) Second, the Review Sub-Committee shall consider whether there is any new evidence which demonstrates that the initial assessment decision is no longer the correct decision. This consideration shall take into account any new information provided by the complainant and/or the Monitoring Officer.

If the Review Sub-Committee determines that the initial decision was unreasonable, or that new information now available to the Sub-Committee demonstrates that the original decision is no longer the correct decision, it shall take a new decision in relation to the matter in accordance with these approved criteria.

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Monitoring officer seminar

Ethical governance toolkit

Contact

Enquiries line: 0845 078 8181

Minicom: 0161 817 5449

www.standardsboard.gov.uk

email: bulletin@standardsboard.gov.uk



Welcome to Issue 40 of the *Bulletin*.

In this *Bulletin* we present an initial analysis of the first quarterly monitoring returns we have received from authorities on local case handling. A fantastic 98% of authorities have submitted their returns and provided us with a clear overview of the successful operation of the devolved ethical framework so far. Thank you all for helping us to ensure the quality of the data.

We are using this opportunity to seek your views on the potential adjournment of assessment sub-committee decision making. This is in order for the monitoring officer to find out whether a subject member would co-operate with a referral for other action. We outline our concerns with this approach, and its possible advantages, and invite your feedback on the most appropriate practice.

Finally, I am pleased to introduce two new Board members, **Michael Kendall** and **Elizabeth Abderrahim**, and confirm that **Professor Judy Simons** has been appointed as the Standards Board for England's new Deputy Chair.



Glenys Stacey
Chief Executive



Seventh Annual Assembly of Standards Committees

13-14 October 2008, ICC Birmingham

See page 4 for more details

Guidance on the local standards framework

The final section of our guidance on the local standards framework has now been completed and is available online in the Guidance section of our website www.standardsboard.gov.uk.

The *Standards committee determinations* guidance has been designed to help members and officers in relevant authorities who are involved in the determination of complaints that a member may have breached the Code of Conduct.

It details each stage of the determination of complaints process and offers suggestions for effective practice. In addition, it provides a toolkit of useful document templates that may be used or adapted by authorities as required.

Folders containing all of the local standards framework guidance will be sent to monitoring officers in early September. Please note that we have updated *The role and make-up of standards committees* guidance and *The local assessment of complaints* guidance since they were first made available on our website. We therefore recommend that you use the guidance in the folder, or the guidance which is currently on our website, as opposed to any versions that you might have printed off previously.

Analysis of first quarterly monitoring returns

Data collection

The first quarter of local case handling has now ended. Following this, we sent an email to the monitoring officers of all principal authorities requesting that they submit their first quarterly return before the deadline of 14 July 2008. The return helps us to provide the national and independent oversight necessary for there to be confidence in a locally based system of complaint handling.

The first return covers the period of 8 May to 30 June 2008 and involved monitoring officers answering a series of questions about their authority's standards committee. They were also required to answer questions about any cases that had been handled locally.

As this was the first time that monitoring officers had to submit a return – and because our online system is brand new – we expected a few teething problems with the data collection. However, we received an overwhelming response rate, with a return from **98%** of authorities.

We are also pleased to report that **90%** of the returns do not have any issues needing further clarification.

Thank you to all monitoring officers, and other authority employees who submitted on their behalf, for ensuring that we have a good, solid data set. This will help us begin to formulate a national picture of local case handling. It will also serve as a starting point for identifying standards committees that we can work with to achieve the goal of ensuring consistently high ethical standards in local government.

Feedback

We are currently gathering feedback from a sample of monitoring officers about their experiences of completing and submitting their quarterly return. Thanks to all the monitoring officers who are participating in this. As a result, we are already looking at making some improvements to the system for future quarterly returns. These include:

- an automated acknowledgement page, so that you will know instantly that your return has been submitted successfully
- a smarter log off procedure, so that monitoring officers of more than one authority can switch between multiple accounts more easily
- improvements to the way that closed cases are managed by the system (over the long term we hope to include an archive of old case details)

Analysis

We are currently analysing the **90%** of returns that are complete, and contacting the other **8%** of authorities whose returns have issues that need clarifying. We have sent a further request to the **2%** of authorities who have not yet submitted their return.

However, our initial observations of the data are as follows:

Standards committees

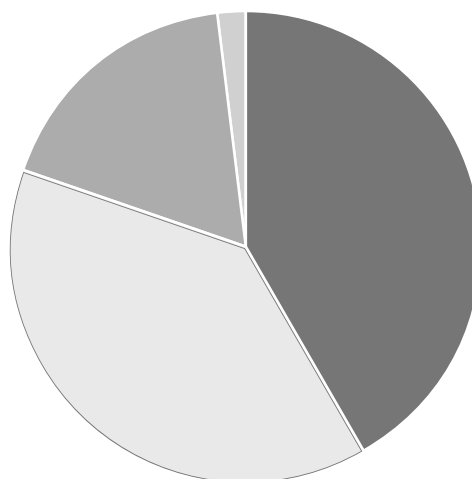
- On average, standards committees have nine members in total, which includes three independent members and, if the authority has parish or town councils, three parish representatives.

- **99%** of standards committees have an independent chair.

Cases handled locally

- **321** cases were received locally between 8 May and 30 June 2008.
- Because the reporting period was shorter than usual, **48%** of cases did not have a decision about how they should be handled by the time the quarter closed. The chart below shows the split of decisions for all cases where a decision was made.

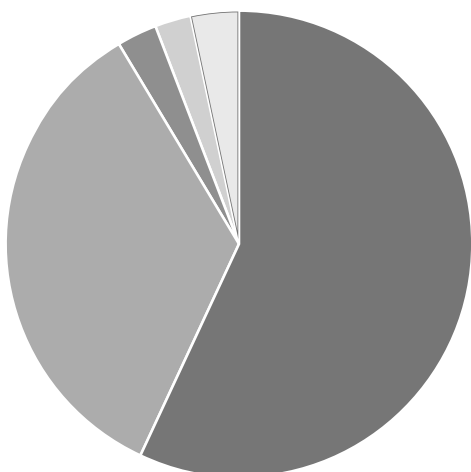
REFERRAL DECISIONS



- 3** Referred to the Standards Board for England
- 30** Referred to the monitoring officer for alternative action
- 65** Referred to the monitoring officer for investigation
- 70** Not referred for investigation

- Discounting the cases where a decision had not been reached, the breakdown shows that most cases were either referred to the monitoring officer for investigation or not referred at all.

SOURCE OF COMPLAINT



- 10 Other
- 8 Parish/Town clerk
- 9 Council officer
- 111 Member
- 183 Member of the public

- As shown in the chart above, more than half of the cases came from complaints made by members of the public. A large proportion also came from members.

The next quarterly return covers case activity in the period 1 July to 30 September 2008. This includes new cases received in the period and previous cases that have progressed in the period. The submission window for returns will be open from 1 to 14 October 2008. A reminder email will be sent to all monitoring officers nearer the time.

A more detailed breakdown of quarterly returns is now available in the Quarterly statistics section of our website www.standardsboard.gov.uk.

Forthcoming events

More than 800 delegates will be attending the fully booked **Seventh Annual Assembly**, 'Delivering the goods: Local standards in action' at the ICC, Birmingham, this October.

Breakout sessions are filling up fast and if you have secured your place at the conference, you are urged to choose your sessions and return your preference form as soon as possible to avoid disappointment.

Many of the presentations and handouts from the Assembly will also be available on the conference website, www.annualassembly.co.uk straight after the event.

We will also be exhibiting at the **Liberal Democrat party conference**, 13-18 September 2008, **Labour party conference**, 21-25 September 2008 and the **Conservative party conference**, 28 September – 1 October 2008.

The Standards Board is urging authorities to enter the Standards and Ethics award category at the **2009 LGC Awards**.

Entering the Standards and Ethics award is a great opportunity to raise the profile of your standards committee. The award will go to an authority which has a dynamic, innovative approach to improving and promoting standards of member conduct. Reaching the final shortlist will also mean that your authority's ethical standards have been judged to be among the best in the country – a powerful message to send to your local community.

Entries are welcome from authorities of any size or status. You can submit yours online at www.lgcawards.co.uk, where you can also find further information on the criteria for the Standards and Ethics category and on the LGC Awards as a whole. The closing date for entries is 3 October 2008.

Date for your diary: The Eighth Annual Assembly will be held on 12-13 October 2009 at the ICC.

Seeking views on adjourning local assessment decisions

Under Section 57A(2) of the Local Government Act 2000, as amended (the Act), when a standards committee receives a complaint it must either:

- (1) take no action on the complaint
- (2) refer the case to the Standards Board for England, or
- (3) refer the case to the monitoring officer of the authority concerned

If the third option is chosen, then under Section 66(6) of the Act, the standards committee can give directions to the monitoring officer about how to deal with the case. The case can either be dealt with by way of a direction to investigate it or to take other action. Once a case is referred for action other than investigation it cannot subsequently be investigated.

Understandably, some standards committees are reluctant to direct the monitoring officer to deal with a case by way of other action when they may not know enough about the circumstances of the case, and do not know whether the member complained about will cooperate with that other action. This is especially true when there does not appear to be any sanction against a member who fails to cooperate with other action, other than perhaps another complaint based on disrepute.

It has been suggested that one way around this difficulty is for the standards committee to adjourn consideration of a case they think might be suitable for other action, and ask the monitoring officer to find out whether the member will cooperate.

An adjournment to enable effective consultation with the monitoring officer would appear to be possible. It is something that does not appear to be prohibited by law. Also, paragraph 13(2) of the

Standards Committee (England) Regulations 2008 (the Regulations), requires the standards committee to consult with the monitoring officer before giving any direction to take other action.

However, there are concerns. Much depends on how the decision is minuted. If the monitoring officer is asked to find out more about the case and the options available to take other action, rather than specifically asked to find out about the attitude of the member to other action, some of those concerns lessen.

Here are some concerns and advantages we have identified and an alternative approach.

Concerns

- (1) Asking the monitoring officer to find out whether the member will cooperate runs the risk of putting the decision about investigation or other action in the hands of the subject member and not the assessment sub-committee.
- (2) The target of dealing with complaints within 20 working days is difficult to achieve.
- (3) What other action is to be discussed and who decides it? Will the standards committee or the monitoring officer effectively make the decision? Or, will it end up being a negotiation with the member if they say "Well, I am not having mediation but I will do training if it consists of X and is done by Y"? We believe this would undermine the authority of the standards committee.
- (4) There is a danger that the monitoring officer will end up effectively starting an investigation before being instructed to do so.
- (5) The member may take the opportunity to try and give the monitoring officer information to pass on to the standards committee to try and persuade it to take no action.

- (6) The more information the monitoring officer collects during the adjournment the more difficult it becomes for members of the standards committee to sit as part of a hearing panel later. The member will find it easier to argue that any standards committee member is biased by having received more information than was appropriate or necessary to carry out their functions under Section 57A of the Act.
- (7) There is an argument that taking into account information other than that provided by the complainant is unlawful. We say the monitoring officer can take steps to clarify the complaint or clarify basic facts. If the subject member is asked how they would react to a direction for other action, this would be finding out what the subject member thinks and feeding that into the decision-making process. Is that an irrelevant consideration?

Advantages

- (1) The members of the standards committee know what the member’s attitude is said to be about the solution the standards committee is proposing to deal with the complaint.
- (2) The standards committee can send a case for investigation when the alternative might have been ineffective other action.
- (3) The case may be settled and the standards committee can decide to take no action.

Alternative

The standards committee sends the case for investigation and lets the monitoring officer know that it might not consider the case to be as serious, if the member were willing to comply with other action. Therefore, if the member so indicates then (subject to any other information the monitoring officer might have gathered which suggested otherwise) the monitoring officer

should feel free to ask that the case be returned to them.

Regulation 16(1)(a) of the Regulations might be capable of being read as supporting this approach. However, there can be a difference between the seriousness of a case and the appropriate way to resolve it.

We would like to receive views from you about what you think should constitute the most appropriate practice. Please contact kymberlie.connell@standardsboard.gov.uk with your views by **22 September 2008**.

New Deputy Chair and Board members appointed

Professor Judy Simons has been appointed as the Standards Board for England’s new Deputy Chair by the Secretary of State for Communities and Local Government. The Secretary of State also appointed **Michael Kendall** and **Elizabeth Abderrahim** as our new Board members.

These appointments to the Board began on 14 July 2008 for a three-year term. Professor Judy Simons takes over from Patricia Hughes CBE, who was Deputy Chair of the Standards Board since it was established in 2001. Patricia’s term ended on 30 June 2008.

Michael Kendall was Monitoring Officer at West Sussex County Council and is former Lead Officer and former President of ACSeS. Michael replaces Roger Taylor whose term ended on 30 October 2007.

Lizzie Abderrahim is a self-employed Freelance Trainer and Independent Chair of Gloucester City Council’s standards committee. Lizzie replaces Professor Judy Simons who became Deputy Chair.

In announcing the new appointments on 17 July 2008, Minister for Local Government **John**

Healey said he was pleased with all the appointments. “All three bring extensive skills and experience to their new roles and will help the Board to develop its role in the maintenance of high standards of conduct in local government.” He also thanked Patricia Hughes for all she had done during her time as Deputy Chair.

Standards Board investigations

We are now receiving the first cases referred to the Standards Board by standards committees. As you know, there are a number of factors we take into account in reaching our decision whether to accept them. This includes exceptional circumstances.

The recent amendments to the Local Government Act 2000 enhanced our powers to share information related to investigations with other regulators, particularly the Local Government Ombudsman and the Audit Commission. We are working with these two organisations to update our communications. The new memoranda of understanding will be publicly available when completed.

One of the matters to come out of our discussions with the Ombudsman was that we would expect to accept complaints which involve allegations of both maladministration and a breach of the Code as an exceptional circumstance. This means that the two investigations could be organised in the most effective and timely way. So, if you are dealing with a complaint arising from incidents that have also resulted, or are likely to result, in an Ombudsman case or an audit enquiry, you will find the Standards Board sympathetic to a request to investigate.

Another amendment to the Local Government Act 2000 gives ethical standards officers the power to send final reports of investigations which do not result in a standards committee hearing to standards committees. This can

happen if the ethical standards officer “believes that it will assist that committee in the discharge of its functions”, as quoted from Section 64(3A) of the Local Government Act 2000.

The functions of a standards committee are:

- to promote and maintain high standards of conduct by members
- to advise on the adoption and revision of a code of conduct
- to monitor its operation
- to arrange training on matters related to the authority’s code of conduct

They also, of course, now have functions relating to complaints of breaches of the Code of Conduct.

We are now sending copies of reports to standards committees when most investigations are completed. We think that it is important for standards committees to understand the background to ethical problems that may have arisen in their area. Sometimes investigations suggest problems with particular policies, procedures or culture locally, which are not part of our remit to investigate, but which seem likely to cause further problems in the future. Where this is the case, we will draw the committee’s attention to those things which we think they might want to look into.

The reports are not sent to enable the committee to reconsider the complaint. Not only would it be unfair to the member concerned to do that, but the committee would not be able to do it fairly without being able to satisfy itself that it could look at and question the primary evidence.

We would be very interested to know how useful standards committees find these reports and any suggestions of ways we could help them use this learning opportunity. Please feel free to contact the Standards Board’s Investigations team on **0161 817 5300** with your thoughts.

Annual Review 2007-08 available online

The Standards Board's Annual Review 2007-08 is now available from the Publications section of our website www.standardsboard.gov.uk. In it, we look back at our performance over the past 12 months and look ahead to future challenges and opportunities.

The theme of this year's review is 'Local delivery. National support.'. It looks at how we prepared for 8 May 2008, when local authorities' standards committees became responsible for receiving complaints and deciding what to do with them. The review also looks at our new, more strategic role, and how it will enable us to offer greater support and advice on the ground.

This year, we have also provided a text only version on our website, which means that you can read and print the text from each chapter, as well as downloading the publication as a pdf. If you require a hard copy, please email publications@standardsboard.gov.uk.

Monitoring officer seminar

On 16 June, the Standards Board hosted a seminar for monitoring officers who have carried out ethical standards officers' directions. A direction is where an allegation of a breach of the Code of Conduct is sent back to a monitoring officer for alternative action. This may include the use of mediation, conciliation, conflict resolution, mentoring, training, and review of policies and protocols.

As we develop the use of directions, we will encourage the constructive use of party group discipline and leveraging in peer support from neighbouring authorities that have overcome their problems.

The event was run by Jennifer Rogers, Ethical Standards Officer, and John Williams, Senior

Policy Adviser. Fifteen monitoring officers attended, and each shared their successes and failures, including their experience of difficulties at parish level.

Key messages were that disputes are often very deep seated and originate in events that occurred long ago; and that disputes that might be inflamed by investigation are better approached by alternative action. There is a specific provision for alternative action in regulations made under the recent Local Government and Public Involvement in Health Act 2007.

We are having another seminar in January so we can share and develop our ideas further in the light of experience. Please call Kimberlie Connell on 0161 817 5300 or email kymberlie.connell@standardsboard.gov.uk if you would like to become involved in this initiative.

Ethical governance toolkit

The Standards Board, the Improvement and Development Agency and the Audit Commission have been working in partnership to update the ethical governance toolkit. The toolkit reflects the changes brought about by the Local Government and Public Involvement in Health Act 2007 and is now available to use.

Many authorities have already benefitted from using the toolkit, which is designed to help local authorities identify how well they are meeting the ethical agenda and to improve their arrangements.

For further information on the ethical governance toolkit and for contact details, please visit the Ethical Governance section of the IDeA website, which you can find at www.idea.gov.uk/knowledge or contact the Audit Commission by email at infogovcounterfraud@audit-commission.gov.uk.

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