

5 December 2008

Our ref: Standards 15.12.08  
Contact: Ian Gourlay  
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To: The Chairman and Members of the Standards Committee of North Hertfordshire District Council

Mr N. Moss (Chairman), Mr P. Chapman (Vice-Chairman), Mr S. Gillies and Mr P. Joester; District Councillors A. Bardett, S. Bloxham, Judi Billing, Lee Downie, David Kearns, Bernard Lovewell, M.R.M. Muir and L.W. Oliver; Town Councillor C. Harlow and Parish Councillors M. Goddard, B. Hillan and R. Wornham.

You are invited to attend a

## **MEETING OF THE STANDARDS COMMITTEE**

To be held in the

**COUNCIL CHAMBER, COUNCIL OFFICES,  
GERNON ROAD, LETCHWORTH**

on

**MONDAY, 15 DECEMBER 2008 at 7.30p.m.**

Yours sincerely,



David Miley  
Democratic Services Manager

**AGENDA**  
**PART I**

<b>ITEM</b>	<b>PAGE</b>
<b>1. APOLOGIES FOR ABSENCE</b>	-
<b>2. MINUTES</b> To take as read and approve as a true record the Minutes of the meeting of the Standards Committee held on 16 September 2008.	-
<b>3. NOTIFICATION OF OTHER BUSINESS</b> Members should notify the Chairman of other business which they wish to be discussed by the Committee at the end of the business set out in the agenda. They must state the circumstances which they consider justify the business being considered as a matter of urgency.  The Chairman will decide whether the item(s) raised will be considered.	-
<b>4. CHAIRMAN'S ANNOUNCEMENTS</b> Members are reminded that any declarations of interest in respect of any business set out in the agenda, should be declared as either a prejudicial or personal interest and are required to notify the Chairman of the nature of any interest declared at the commencement of the relevant item on the agenda. Members declaring a prejudicial interest can speak on the item, but must leave the room before the debate and vote.	-
<b>5. CODE OF CONDUCT UNDERTAKING, REGISTER OF INTERESTS AND TRAINING</b> REPORT OF THE DEPUTY MONITORING OFFICER <i>To advise the Committee on compliance by District and Parish Members with their statutory obligation to provide a written undertaking to abide by the Code of Conduct, the up- to-date position of the register of interests, and whether appropriate training has been undertaken by those Members.</i>	<b>1</b>
<b>6. COMPLIANCE WITH THE CODE OF CONDUCT</b> REPORT OF THE DEPUTY MONITORING OFFICER <i>To review complaints made against councillors within the North Hertfordshire District since the introduction of the Code of Conduct.</i>	<b>21</b>
<b>7. REVISIONS TO THE CONFIDENTIAL REPORTING CODE</b> REPORT OF THE DEPUTY MONITORING OFFICER <i>To consider further revisions to the Confidential Reporting Code.</i>	<b>31</b>
<b>8. DCLG CONSULTATION DOCUMENT ON CHANGES TO THE CODE OF CONDUCT</b> REPORT OF THE DEPUTY MONITORING OFFICER <i>To endorse a suggested response from the Standards Committee to a DCLG consultation document on Changes to the Code of Conduct.</i>	<b>41</b> <b>REPORT TO FOLLOW</b>
<b>9. POLITICALLY RESTRICTED POSTS</b> REPORT OF THE DEPUTY MONTORING OFFICER <i>To consider a report on Politically Restricted Posts.</i>	<b>43</b> <b>REPORT TO FOLLOW</b>

**Next Meeting of Standards Committee – to be arranged.**

<b>STANDARDS COMMITTEE</b> <b>15 DECEMBER 2008</b>
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<b>*PART 1 – PUBLIC DOCUMENT</b>	<b>AGENDA ITEM No.</b>  <b>5</b>
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**TITLE OF REPORT: CODE OF CONDUCT – UNDERTAKING, REGISTER OF INTERESTS & TRAINING**

REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

1.1 A report to advise the Committee on:

- compliance by district and parish members with their statutory obligation to provide a written undertaking to abide by the Code of Conduct,
- the up to date position of the register of interests, and
- whether appropriate training has been undertaken by those Members.

**2. FORWARD PLAN**

2.1 This matter is not required to be noted on the forward plan.

**3. BACKGROUND**

3.1 The member Code of Conduct was revised in 2007 and authorities had until 1 October 2007 to adopt the Code. The 2001 Code continued to be in force until the local authority adopted the 2007 Code, or until 1 October 2007, whichever was earlier.

3.2 The Code was adopted by the members of NHDC on the 17 May 2007.

3.3 Although the model code does apply to parish members certain paragraphs of the Code are not mandatory and had to be included within the Code by a resolution of the parish council. Paragraph 7 (requirement to have regard to advice given by certain officers) and paragraphs 11 & 12 (ability to speak on a matter in which there is a prejudicial interest) are not automatically included within the parish code of conduct.

3.4 The Standards Board produced a model code of conduct for town and parish councils which included the right to speak on matters where a prejudicial interest was held.

3.5 Every member has a duty to comply with the Code which is demonstrated by giving a written undertaking to their authority that they will abide by the Code. This undertaking is generally included within the form of declaration of acceptance of office. The undertaking has to be given within 28 days of accepting office (or two months of adoption of the Code where this is adopted mid-term).

3.6 Under paragraph 13 of the Code members also have an obligation to register their personal interests within 28 days of the Code being adopted and to keep the register up-dated.

- 3.7 The statutory instrument attaching the model code of conduct is included at Appendix 1.
- 3.8 Training on the 2007 Code was offered to all District Council Members, parish clerks and chairmen on the 17 October 2007 and 10 March 2008. The list at Appendix 3 lists those Members and clerks who attended the training.
- 3.9 Training was not offered to parish members as the training room could not accommodate all Members of the whole district. Parish/town clerks were encouraged to attend so that they could guide their Members on the interpretation of the Code.

#### **4. ISSUES**

- 4.1 The Monitoring Officer currently holds:
- a schedule for the district and each parish council recording all declarations of acceptance of office (which include the undertaking to abide by the Code) and
  - the register of interests
- 4.2 The schedules attached at Appendix 2 are a summary of those more detailed records held by the Monitoring Officer.
- 4.3 The summary of the District Council records demonstrate that all District Members have complied with the requirement to give an undertaking to abide by the Code and have completed their register of interests.
- 4.4 The summary of parishes demonstrates that the following Councils have Members who have failed to return a signed undertaking:
- Knebworth  
Newnham  
Offley  
St.Ippolyts  
Weston  
Wymondley
- 4.5 The following Councils also have Members who have failed to return an interests form:
- Bygrave  
Knebworth  
Offley  
Reed  
Rushden/Wallington  
St. Ippolyts  
Weston  
Wymondley
- 4.6 However of those, Bygrave, Newnham & Preston have returned incorrect forms rather than no forms at all. The Monitoring Officer has written to each of those Councillors on several occasions to remind them of the need to complete forms correctly.

## **5. LEGAL IMPLICATIONS**

- 5.1 Members of authorities that did not adopt a revised Code by the 1 October 2007 are automatically covered by the model code, as it was deemed to be adopted by them on the 1 October.
- 5.2 Parishes who did not specifically adopt the Standards Board model code of conduct are subject to the model code attached to the statutory instrument which does not give them a right to speak on matters where a prejudicial interest exists.
- 5.3 Failure to provide a written undertaking to abide by the Code means that the Member ceases to be a Member of the authority. The Merthyr Tydfil case (where the Members failed to sign the Code on time) demonstrated that the Member does not lose their office and so does not require to be re-elected, but that whilst the Code remains unsigned they should not act as a Member. This may put any decisions of the Council in which they are involved at risk of being unlawful.
- 5.4 One of the primary functions of the Standards Committee is to ensure that Members are trained on matters related to the Code of Conduct. A strict interpretation of this provision (section 54 LGA 2000) does not extend that requirement to Members of town or parish councils.

## **6. FINANCIAL AND RISK IMPLICATIONS**

- 6.1 None.

## **7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

- 7.1 None.

## **8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 8.1 This report is being sent to each town and parish council.

## **9. RECOMMENDATIONS**

- 9.1 That the Chairman of the Standards Committee write to each of the parish councils to remind them of their statutory obligations to return the undertaking and register of interests forms to the Monitoring Officer.
- 9.2 That a further report be brought back to a later meeting of the Standards Committee to advise on progress relating to the forms.
- 9.3 That the Monitoring Officer consider relevant training for Members of the Council at the appropriate time.

## **10. REASONS FOR RECOMMENDATIONS**

- 10.1 To ensure that the town and parish councils are abiding by their statutory obligations.

## **11. ALTERNATIVE OPTIONS CONSIDERED**

- 11.1 None possible as these are statutory obligations.

## **12. APPENDICES**

- 12.1 Appendix 1 – Local Authorities (Model Code of Conduct) Order 2007.
- 12.2 Appendix 2 – Summary of schedules recording forms returned by Members.
- 12.3 Appendix 3 – summary of those attending training.

## **13. CONTACT OFFICERS**

- 13.1 Kim Sawyer - Deputy Monitoring Officer x4561  
[kim.sawyer@north-herts.gov.uk](mailto:kim.sawyer@north-herts.gov.uk)

## **14. BACKGROUND PAPERS**

- 14.1 Standards Board model code of conduct for parish and town councils

APPENDIX 2

Declarations of Acceptance							Register of Interest							
Candidates	Date Elected	Date Signed	Date Received	Rec'd	Signed	<28 Days	Date Elected	Date Signed	Date Received	Rec'd	Signed	<28 Days	Comments	
ASHLEY, Mrs A.G.	03/05/2007	15/05/2008	15/05/2008	yes	yes	yes	03/05/2007	29/05/2007	29/05/2007	yes	yes	yes	Complete	New acceptance form received not due
BARDETT, A	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	02/05/2008	09/05/2008	yes	yes	yes	Complete	
BARNARD, D.J.	03/05/2007	12/05/2007	12/05/2007	yes	yes	yes	03/05/2007	08/05/2007	04/06/2007	yes	yes	yes	Complete	
BEARDWELL, Liz	03/05/2007	17/05/2007	17/05/2007	yes	yes	yes	03/05/2007	09/05/2007	11/05/2007	yes	yes	yes	Complete	
BILLING, D	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	08/05/2007	09/05/2007	yes	yes	yes	Complete	
BILLING, Judi	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	31/05/2007	01/06/2007	yes	yes	yes	Complete	
BISHOP, John	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	01/06/2007	18/06/2007	yes	yes	no	Complete	
BLOXHAM, S	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	17/05/2007	19/05/2007	yes	yes	yes	Complete	
BODY, Clare	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	21/05/2007	11/08/2008	yes	yes	no	Complete	
BOOTH, John	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	06/06/2007	06/06/2007	yes	yes	no	Complete	
BRINDLEY, Thomas	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	08/05/2007	29/05/2007	yes	yes	yes	Complete	
BURT, P.C.W	03/05/2007	08/05/2007	08/05/2007	yes	yes	yes	03/05/2007	30/05/2007	01/06/2007	yes	yes	yes	Complete	
CLARK, P	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	05/06/2007	06/06/2007	yes	yes	no	Complete	
CUNNINGHAM, J.M.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	03/06/2007	05/06/2007	yes	yes	no	Complete	
DAVEY, Melissa	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	05/06/2007	20/06/2007	yes	yes	no	Complete	
MARMENT, P	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	02/05/2008	07/05/2008	yes	yes	yes	Complete	
DOWNIE, Lee	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	06/05/2008	06/05/2008	yes	yes	yes		No political party
GIBBS, Tricia	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	10/05/2007	16/05/2007	yes	yes	yes	Complete - Form returned 18/07/07	No political party - Forms returned 16/07/07
GRAY, Jane	03/05/2007	17/05/2007	17/05/2007	yes	yes	yes	03/05/2007	21/05/2007	21/05/2007	yes	yes	yes	Complete - Form returned 15/08/07	No Home Address - Form returned 16/07/07
GRINDAL, G	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	30/05/2007	01/06/2007	yes	yes	yes	Complete	
HILL, Ms F.R.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	18/05/2007	22/05/2007	yes	yes	yes	Complete	
HONE, T.W.	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	02/05/2008	08/05/2008	yes	yes	yes	Complete	
HUNTER, A.F.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	21/05/2007	23/05/2007	yes	yes	yes	Complete	
INWOOD, R.	03/05/2007	17/05/2007	17/05/2007	yes	yes	yes	03/05/2007	30/05/2007	01/06/2007	yes	yes	yes	Complete	
JARVIS, Sal	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	13/08/2007	15/08/2007	yes	yes	no	Calls chasing 13/06/07 and 16/07/07	Form received 15/08/07
JARVIS, S K	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	08/05/2007	10/05/2007	yes	yes	yes	Complete	
KEARNS, D.P.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	31/05/2007	04/06/2007	yes	yes	yes	Complete	
KERCHEMER, MRS. L.R.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	29/05/2007	29/05/2007	yes	yes	yes	Complete	
KIRBY, Mrs J.I.	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	22/05/2008	23/05/2008	yes	yes	yes	Complete	
KIRKLAND Marilyn	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	14/05/2008	18/05/2008	yes	yes	yes	Complete	
KNIGHTON, J.I.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	03/05/2007	30/05/2007	yes	yes	yes	Complete	
LEVETT, David	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	08/05/2008	12/05/2008	yes	yes	yes	Complete	
LOVEWELL, Bernard	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	27/05/2007	04/06/2007	yes	yes	yes	Complete - Forms returned 29/08/07	No political party - Forms returned 16/07/07
NEEDHAM, E	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	15/07/2008	16/07/2008	yes	yes	no		No political party - or home address declared
MARSHALL, H.M.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	09/05/2007	09/05/2007	yes	yes	yes	Complete - Forms returned 23/07/07	No Home Address - Form returned 16/07/07
MILLARD, Alan	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	17/05/2007	18/05/2007	yes	yes	yes	Complete	
MILLER, D.	03/05/2007	15/05/2008	15/05/2008	yes	yes	yes	03/05/2007	02/04/2008	04/04/2008	yes	yes	yes	Complete	New acceptance form received not due + FI c
MUIR, M.R.M.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	01/06/2007	18/06/2007	yes	yes	no	Complete	
NEEDHAM, Mrs L.A.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	14/05/2007	16/05/2007	yes	yes	yes	Complete	
OLIVER, L.W.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	09/05/2007	10/05/2007	yes	yes	yes	Complete	
PATTERSON, M	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	23/05/2008	28/05/2008	yes	yes	yes	Complete	
SANGHA Deepak	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	18/07/2008	08/08/2008	yes	yes	no	Complete	
SHAKESPEARE – SMITH R.	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	15/05/2008	15/05/2008	yes	yes	yes	Complete	
SMITH, F.J.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	08/05/2007	10/05/2007	yes	yes	yes	Complete - Forms returned 10/08/07	No political party - Forms returned 16/07/07
STEARNS, Martin	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	08/06/2007	13/06/2007	yes	yes	no	Complete	
STRONG, Mrs C.P.A.	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	07/05/2008	08/05/2008	yes	yes	yes	Complete	
THAKE, R.A.C.	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	03/05/2008	16/07/2008	yes	yes	no	Complete	
WEEKS, M.E.	01/05/2008	01/05/2008	02/05/2008	yes	yes	yes	01/05/2008	16/07/2008	08/08/2008	yes	yes	no	Complete	
YOUNG, A.D.	03/05/2007	04/05/2007	04/05/2007	yes	yes	yes	03/05/2007	10/05/2007	21/05/2007	yes	yes	yes	Complete	
				Yes	49	49	49			Yes	49	49	36	
				No	0	0	0			No	0	0	13	



## APPENDIX 2

	Declaration of Acceptance						Register of Interest							
	Candidates	Received		Signed		<28 days		Candidates	Received		Signed		<28 days	
		Yes	No	Yes	No	Yes	No		Yes	No	Yes	No	Yes	No
Ashwell	12	12	0	12	0	0	12	12	0	12	0	0	12	
Barkway	7	7	0	7	0	7	0	7	0	7	0	1	6	
Barley	6	6	0	6	0	0	6	6	0	6	0	0	6	
Bygrave	5	5	0	5	0	0	5	5	0	4	0	0	4	
Caldecote	0	0	0	0	0	0	0	0	0	0	0	0	0	
Codicote	10	10	0	10	0	10	0	10	0	10	0	7	2	
Graveley	5	5	0	5	0	0	5	5	0	5	0	0	5	
Hinxworth	5	5	0	5	0	0	5	5	0	5	0	0	5	
Holwell	5	5	0	5	0	0	5	5	0	5	0	0	5	
Ickleford	8	8	0	8	0	8	0	8	0	8	0	8	0	
Kimpton	0	0	0	0	0	0	0	0	0	0	0	0	0	
Kings Walden x2	8	8	0	8	0	0	8	8	0	8	0	8	0	
Knebworth	12	11	0	11	0	10	1	12	11	0	11	0	10	1
Lilley	7	7	0	7	0	6	1	7	7	0	7	0	0	7
Newnham	4	0	0	0	0	0	0	4	4	0	4	0	2	2
Offley x2	9	8	0	8	0	0	8	9	8	0	8	0	0	8
Pirton	9	9	0	9	0	0	9	9	0	9	0	0	9	
Preston	7	7	0	7	0	4	2	7	7	0	7	0	4	2
Reed	5	4	0	4	0	0	4	5	4	0	4	0	1	3
Royston	15	14	0	14	0	1	13	15	15	0	15	0	1	14
Rushden/Wallington	5	5	0	5	0	0	5	5	4	0	4	0	0	4
Sandon	6	6	0	6	0	0	6	6	0	6	0	0	6	
St Ippolyts x2	8	6	0	6	0	6	0	8	6	0	6	0	6	0
St Pauls Walden	7	7	0	7	0	0	0	7	7	0	7	0	0	0
Therfield	7	7	0	7	0	7	0	7	7	0	7	0	2	5
Weston	9	8	0	8	0	0	8	9	6	0	6	0	0	6
Wymondley x3	8	6	0	6	0	0	6	8	6	0	6	0	0	6

**APPENDIX 3**

District Councillors	Date attended
ASHLEY, Mrs A.G.	17/10/2007
BARDETT, A	17/10/2007
BARNARD, D.J.	AWAY ON HOLIDAY
BEARDWELL, L	AWAY ON HOLIDAY
BILLING, D	HAD TRAINING BY HCC
BILLING, Judi	CHASED 27/2/08
BISHOP, J	10/03/2008
BLOXHAM, S	HAD ANOTHER MEETING
BODY, Clare	CHASED 27/2/08
BOOTH, John	17/10/2007 + 10/03/08
BRINDLEY, T	10/03/2008
BURT, P.C.W	10/03/2008
CLARK, P	17/10/2007 + 10/03/08
CUNNINGHAM, J.M.	17/10/2007
DAVEY, M	SAID YES DID NOT ATTEND
DEAR, Allison	RESIGNED
DOWNIE, Lee	CHASED 27/2/08
GIBBS, Tricia	17/10/2007
GRAY, J	SAID YES DID NOT ATTEND
GRINDAL, G	17/10/2007
HILL, F	17/10/2007
HONE, T.W.	10/03/2008
HUNTER, A.F.	17/10/2007
INWOOD, R.	10/03/2008
JARMAN, Arthur	17/10/2007
JARVIS, Sal	10/03/2008
JARVIS, S.K.	CHASED 27/2/08
KEARNS, D.P.	17/10/2007
KERCHER, MRS. L.R.	17/10/2007 + 10/03/08
KIRBY, Mrs J.I.	17/10/2007
KIRKLAND Marilyn	LSP MEETING
KNIGHTON, J.I.	17/10/2007
LEVETT, D	17/10/2007
LOVEWELL, B	17/10/2007
MANTLE, Ian	10/03/2008
MARSHALL, H.M.	17/10/2007
MILLARD, Alan	17/10/2007
MILLER, D.	10/03/2008
MUIR, M.R.M.	SAID YES DID NOT ATTEND
NEEDHAM, Mrs L.A.	10/03/2008
OLIVER, L.W.	10/03/2008
SANGHA Deepak	17/10/2007
SHAKESPEARE – SMITH R.	17/10/2007
SMITH, F.J.	17/10/2007
STEARNS, Martin	PRIOR ENGAGEMENT
STRONG, Mrs C.P.A.	17/10/2007
THAKE, R.A.C.	CHASED 27/2/08
WEEKS, M.E.	CHASED 27/2/08
YOUNG, A.D.	CANT ATTEND

Parish Clerks	Date attended
Ms Jane Porter,Ashwell	10/03/2008
Ms Anne Wright,Barley	CHASED 27/2/08
Mrs S Neilson,Barkey	SAID YES DID NOT ATTEND
Mrs Karen Clark,Bygrave	CHASED 27/2/08
Ms Lorraine Ellis,Codicote	17/10/2007
Mr R A H Wainright-Lee,Newnham	WOULD LET US KNOW
Mrs K Goater,Graveley	10/03/2008
Mrs Wendy Kitchener,Hinxworth	WOULD LET US KNOW
Mrs A Warner,Holwell	CHASED 27/2/08
Mrs K Henshaw,Ickleford	CHASED 27/2/08
Mrs C E Helmn,Kimpton	17/10/2007
Mrs J M Ashby,Kings Walden	CHASED 27/2/08
Mrs C E Graham,Knebworth	10/03/2008
Mrs E Sheppard,Lilley	CHASED 27/2/08
Ms Emma Payne,Offley	CANT ATTEND
Mrs Jenny Smart,Pirton	M GODDARD ATTENDING
Mrs M Trinder,Preston	CANT ATTEND
Mrs D Bamford,Reed	ILL
Mrs Elspeth Gutteridge,Rushden	CHASED 27/2/08
Mrs D A Brown,Sandon	17/10/2007
Mrs Audrey Powell,St Ippolyts	10/03/2008
Ms Vicky Fastenbauer,St Pauls Walden	CANT ATTEND
Ms Christine Jutsum,Therfield	PRIOR ENGAGEMENT
Ms Alison Harding,Weston	UNABLE TO CONTACT
Mr John Fisher,Wymondley	10/03/2008
Ms Susan Thornton-Bjork,Royston	17/10/2007
Mrs Patricia Nevins,Letchworth	17/10/2007

Additional attendees	Date attended
Mark White, Ashwell	10/03/2008
Mr Alan Lines	10/03/2008
Mr Philip Crowe (Chairman) Ickleford	17/10/2007
Mr Michael Goddard Pirton + SC	10/03/2008
Mr Robert Wornham (Chairman) Sandon	17/10/2007
Mr K Holden (Chairman) St Ippolyts	10/03/2008
Garry Gover - Community Development officer (Southern Rural)	10/03/2008

**TITLE OF REPORT: COMPLIANCE WITH THE CODE OF CONDUCT**

REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

- 1.1 A report to review complaints made against Councillors within the North Herts District since the introduction of the Code of Conduct.

**2. FORWARD PLAN**

- 2.1 This matter is not relevant to the forward plan.

**3. BACKGROUND**

- 3.1 The Code of Conduct was introduced in 2001 to ensure good governance within local authorities and other public bodies.

- 3.2 Each year the Council is assessed on its governance arrangements as part of the inspection regime carried out by the Audit Commission. Comprehensive Performance Assessment (CPA) is, as it suggests, a performance management system which looks at how councils are working towards improvements in their administrative, financial and governance arrangements.

- 3.3 Assessment is against a set of criteria specified in the 'key lines of enquiry' which set out the criteria against which the Council must demonstrate that it has suitable processes underpinning good governance arrangements.

- 3.4 There are three levels of achievement which are shown on the extract from the key lines of enquiry for 2008 attached at Appendix 1. At level 3 the key lines of enquiry ask the Council to demonstrate that:

**“The council has undertaken an assessment of standards of conduct, including how effectively members are complying with the code of conduct, the number and types of complaints received, and takes action as appropriate”.**

- 3.5 This report considers the number and type of complaints received since the introduction of the Code of Conduct in 2001 and considers the effectiveness of the Standards Committee in meeting the above standard.

**4. ISSUES**

- 4.1 As members are aware the new local referrals process was introduced in June 2008. This report lists the number and type of complaints year by year with details of cases in 2008 split between pre- and post- local referral of complaints.

- 4.2 Prior to June 2008 complaints were referred direct to the Standards Board. These were initially assessed by a caseworker who considered whether the allegation could amount to a potential breach of the Code. If so, the matter was referred on to an Ethical Standards Officer for investigation. In 2007, the Standards Board began to give greater consideration to whether it should refer matters to the Monitoring Officer for investigation rather than to an Ethical Standards Officer.
- 4.3 In cases where the caseworker decided not to refer the matter for investigation the Monitoring Officer was advised of the decision not to refer the matter for investigation and the reasons why, however relevant paragraphs of the Code were often not identified. In the following list relevant provisions of the code are listed (where these can be easily identified) in order to give members an indication of the most frequent types of complaint.
- 4.4 Details of specific complaints are also given where these are a matter of public record:

#### **2005**

There were three separate complaints made against a single town councillor that the councillor had potentially breached paragraph 3 of the Code of Conduct by failing to treat others with respect. In each case the decision of the Standards Committee was that the matters should not be investigated as the conduct did not amount to improper behaviour.

#### **2006**

There were two complaints in 2006 against two separate town councillors.

The allegations against the first councillor indicated potential breach of several different paragraphs of the Code (failure to treat with respect & improper use of position amongst others). The matter was not referred for investigation as no potential breach of the code was evident.

The allegation against the second councillor was again found not to be within the jurisdiction of the code of conduct and therefore was not referred for investigation.

#### **2007**

There were 4 complaints in 2007. Three of these were against town councillors and one against a district councillor.

Of these four, two did not demonstrate any potential breach of the code and so were not referred for investigation. Two cases were however referred for investigation. These were:

- Complaint against parish Councillor Mawer for failure to treat the complainant, a member of the public, with respect. The investigation by the Monitoring Officer concluded that there was no breach of the code. The Monitoring Officer did however make recommendations, which the Standards Committee endorsed, regarding the keeping of minutes and records keeping.

The clerk to St.Ippolyts Council has written confirming that the recommendations of the Standards Committee have been noted and complied with (Appendix 2).

- Complaint against town Councillor Smale for failing to treat the town clerk with respect and bringing the Letchworth Garden City Town Council into disrepute. Councillor Smale was investigated and at hearing it was concluded that he had breached the Code of Conduct. The sanction was a maximum 6 week suspension unless and until a written apology was given to the former clerk

The suspension began on the 8 October and, as no apology was given, continued for the six week period.

### **2008 (prior to the local referrals process)**

There were 5 complaints made between January and end of May 2008. Four complaints were made against town councillors for failure to declare an interest and one against a parish councillor for failure to declare a prejudicial interest.

The Standards Board considered that in relation to the four complaints against the town councillors there was no breach of the code as the matters complained of were not sufficient to amount to an interest.

The remaining complaint was made against Councillor Beavis, Parish Councillor of Kings Walden Parish Council. This was considered suitable for investigation by the Monitoring Officer who concluded that following investigation that there were 4 breaches of the code – failure to declare a prejudicial interest, failure to withdraw from the meeting, seeking to improperly influence the outcome of a decision and seeking to use his position to confer a disadvantage. At the hearing Councillor Beavis agreed that he had a prejudicial interest and failed to withdraw from the room. The Standards Committee concluded that no further breaches of the code had been proven and that the appropriate sanction was training on the code. That training has not yet been carried out.

### **2008 (post local referrals process)**

Nine complaints have been received since legislative changes were introduced to refer complaints to the Standards Committee rather than the Standards Board. Those complaints are all against town councillors.

Of those complaints seven have been to the Assessment Sub-Committee. Six matters have been referred to the Standards Board and a report on the Standards Board response is to be considered on the 15 December. Details of those cases are limited as those complaints are still pending decision. The seventh complaint was not considered suitable for further investigation and is going to the Review Sub-Committee at the complainants request on the 18 December.

The remaining two complaints are to be referred to the Assessment Sub-Committee one of which will be heard on the 18 December).

### **Conclusions**

From the above it can be concluded that:

- there has only been one complaint against a district councillor since the introduction of the Code of Conduct in 2001 and that complaint was not considered to amount to potential breach of the code of conduct;

- whilst most of the cases concerned town or parish councillors, in the majority of cases no further action was required to be taken against the councillors complained of;
- further training for Councillor Beavis should be arranged as soon as convenient;
- that standards of conduct are generally good amongst councillors and no immediate action is identified by this report.

## **5. LEGAL IMPLICATIONS**

- 5.1 Members have a duty to abide by the Code of Conduct under the Local Government Act 2000.
- 5.2 Failure to abide by the code of conduct may not only bring the councillor and the authority onto disrepute but could call into question the legality of the decision made by the council or committee upon which a member sits. This could put the authority at risk of legal challenge.

## **6. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 6.1 All town and parish councils will be issued with a copy of this report.

## **7. RECOMMENDATIONS**

- 7.1 It is proposed that the Committee note the conclusions of this report and recommend that the Monitoring Officer report the number and type of complaints received to the Standards Committee on a regular basis. It is suggested that half yearly reporting would be sufficient.
- 7.2 It is further recommended that the Monitoring Officer should arrange regular training on the Code of Conduct for Members of the Council, parish clerks and chairmen and those town and parish councillors who have been identified suitable for training through the investigation process.

## **8. REASONS FOR RECOMMENDATIONS**

- 8.1 To ensure good governance of the Members.

## **9. APPENDICES**

- 9.1 Appendix 1 – extract from the CPA key lines of enquiry 2008.
- 9.2 Appendix 2 – correspondence from the clerk to St.Ippolyts Parish Council.

## **10. CONTACT OFFICERS**

- 10.1 Kim Sawyer Corporate Legal Manager/Deputy Monitoring Officer x4561  
kim.sawyer@north-herts.gov.uk

## **11. BACKGROUND PAPERS**

- 11.1 Audit Commission website pages on CPA.

**TITLE OF REPORT: REVISIONS TO THE CONFIDENTIAL REPORTING CODE**

REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

1.1 A report to consider further amendments to the Confidential Reporting Code.

**2. FORWARD PLAN**

2.1 This is not relevant to the Forward Plan.

**3. BACKGROUND**

3.1 The Council's Confidential Reporting Code is a policy which falls within the jurisdiction of the Standards Committee as well as Human Resources. It plays an important part in meeting the Council's commitment to openness, honesty and ethical propriety as set out in the Anti-Fraud and Corruption Policy.

3.2 The policy last came before the Standards Committee on the 16 September when the Committee suggested that the internal HR policy could be made clearer, particularly in relation to the procedure for reporting a matter of concern. Following that meeting the Deputy Monitoring Officer attended a seminar on whistleblowing run by 'Public Concern at Work' and has made a number of further amendments to the policy to take account of that training and the suggestions made by the Standards Committee.

3.3 This matter is also being referred to the Joint Staff Consultative Committee on the 10 December 2008 and any recommendations made by that group will be verbally reported to the Standards Committee.

**4. ISSUES**

4.1 Reflecting the comments of the Standards Committee the policy has been amended to make clear:

- That whilst the Council encourages employees to speak to their line managers, there is a process for escalating concerns where they are sensitive or serious;
- What employment protections are offered to staff who want to report their concerns;
- Openly discussing concerns is a culture that the Council would like to encourage, but confidentiality is assured for sensitive cases;
- That external reporting is possible but should be a last resort.

4.2 The previous policy was thought to be confusing because it had too many reporting lines: either to the line manager, the audit manager, the Chief Financial Officer, the Chief Executive or the Chair of the Standards Committee. All of these officers then had to report the matter to the Monitoring Officer. The revisions to the policy make

clear that whenever possible, concerns should be addressed to the line manager unless they are particularly sensitive or serious, in which case the officer should go direct to the Monitoring Officer.

- 4.3 The previous policy did not clarify when and to whom the officer should report if he wanted to take the concern outside of the authority. In such cases officers may believe that the press would be the appropriate means of airing their concerns, when the regulator (Audit Commission) is in fact the body most likely to assist with the concern. In addition, the Audit Commission will give advice on raising concerns through the internal procedures if the officer has not already done so.
- 4.3 The policy now addresses the approach taken to anonymous allegations and confidential reporting and when confidentiality might not be possible.
- 4.4 The policy also aims to distinguish between personal concerns of the employee for which the grievance procedure is available and concerns which affect colleagues and other persons.

## **5. LEGAL IMPLICATIONS**

- 5.1 The Public Interest Disclosure Act 1998 was introduced to offer employment protection to any worker who raised concerns about the employers means of operation. It provides for protection against victimisation and particularly offers more ready protection for those employees go outside of the authority where there are no or ineffective whistleblowing arrangements within the authority. This alone is reason for a suitable policy
- 5.2 In order to be effective whistleblowing policies should be audited and the Monitoring Officer should be assessed for their accountability in operating the scheme. It is suggested that suitable protocols should be developed with the Audit Manager for the investigation and review processes referred to under the policy. Suitable audits of the process could be undertaken by regular reporting to the Standards Committee of the number of reports received and the outcomes.
- 5.3 The Council has a commitment in its Anti-Fraud policy to confidential reporting.

## **6. FINANCIAL AND RISK IMPLICATIONS**

- 6.1 This work already falls within the remit of the Monitoring Officer and requires no further resource to implement.

## **7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

- 7.1 The Human Resources team will support the application of this policy with advice to staff where required.

## **8. CONSULTATION WITH EXTERNAL ORGANISATIONS AND WARD MEMBERS**

- 8.1 None.

## **9. RECOMMENDATIONS**

- 9.1 That the Standards Committee consider and make any suggestions for amendment to the Council's internal employment policy for Confidential Reporting.
- 9.2 That the JSCC endorse the recommendation that the Monitoring Officer work with the Audit Manager to produce protocols for the investigation and review process and that these be referred to a later Standards Committee for comment prior to approval.

## **10. REASONS FOR RECOMMENDATIONS**

- 10.1 To ensure that the Council has effective means of tackling fraud issues.

## **11. ALTERNATIVE OPTIONS CONSIDERED**

- 11.1 None.

## **12. APPENDICES**

- 12.1 Appendix 1 - The Confidential Reporting Code for employees.

## **13. CONTACT OFFICERS**

- 13.1 Kim Sawyer Deputy Monitoring Officer ext 4561

## **14. BACKGROUND PAPERS**

- 14.1 Cipfa / Solace Chapter 5 Summary of the Framework for Good Governance.

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## Confidential Reporting (Whistleblowing)

### *What is this policy about?*

Whistleblowing is the common term used when an employee raises a concern about the way that the Council operates which could put colleagues, the public, Councillors or the Council's own reputation at risk.

As an employee, you are often the first to realise that there may be something seriously wrong within the Council. However, you may not feel able to express your concerns because you feel that speaking up would be disloyal to your colleagues or to the Council.

You may also fear harassment or victimisation. In these circumstances you may feel it is easier to ignore the concern than report what may be a suspicion of malpractice.

The Council has introduced this policy to reassure you that it is safe and acceptable to speak up and enable you to raise any concern at an early stage and in the right way. It aims to ensure you are aware of how to raise a concern and assure you that you will be protected from possible reprisals or victimisation if you have made a disclosure in good faith.

### *What this policy does not cover*

This policy does not cover complaints about your employment or any grievance about the conditions of your employment or the manner in which you may have been treated. Those matters are covered by the complaints resolution policy or the bullying and harassment policy which can be found on the intranet. The Confidential Reporting Code is about risk to the interests of others or the Council.

This policy does not cover allegations that Councillors may have breached the Code of Conduct. A complaint form about Councillor conduct is available on the intranet and the internet.

This policy has been discussed with the relevant trade unions and has their support.

### **Applicable to:**

**ALL ( X ) Non-management ( ) Management ( ) Members ( )**



## **Our Policy**

The Council is committed to this policy and has appointed the Monitoring Officer to have overall responsibility for the operation of this policy. The Monitoring Officer maintains a record of concerns raised and the outcomes of investigative work in a form which does not endanger your confidentiality.

Confidential reports may be presented to the Standards Committee and the Council if this is necessary.

### ***Anonymous Allegations***

The Council would like to promote a culture of openness and honesty amongst its staff and you are encouraged to put your name to your allegation whenever possible.

Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Monitoring Officer. In exercising this discretion the factors to be taken into account would include:

- the seriousness of the issues raised;
- the credibility of the concern; and
- the likelihood of confirming the allegation from other sources.

Please remember that if you do not tell us who you are it is impossible to give you feedback, or protect your position and it might not be possible to continue without your personal evidence of the wrongdoing.

### ***Who do I speak to?***

You should feel confident to come forward with any concerns you have, and if you are able to speak to your line manager about the issue, please do so.

Your line manager will tell the Monitoring Officer about your concerns, however the Monitoring Officer will expect your line manager to deal with the matter and will not become involved unless necessary. You can speak to the Monitoring Officer at any time if you are concerned about the way your line manager is handling the problem.

Where your concern relates to a serious or sensitive matter which you don't want to raise with your line manager or you suspect management is involved, you should approach the Monitoring Officer direct.

If you want your identity to remain confidential please tell the Monitoring Officer. The Monitoring Officer can be contacted as follows:

Monitoring Officer (Head of Legal & Democratic Services) – Tel: 4561 or by email to 'Monitoring.Officer@north-herts.gov.uk'



If you have reported your concerns but don't think that the Monitoring Officer is dealing with your concerns properly, you might wish to raise a matter with an independent person. You can contact the Chairman of the Council's Standards Committee. The Chairman is an independent Member of the Council and his details can be obtained from Committee Services. He can ask the Monitoring Officer for a report on how the matter is proceeding.

Finally, if you believe that the matter is so serious that you cannot discuss your concern with any officer internally, you can contact the Audit Commission. (Hotline 020 7630 1019). This should only be used for the most serious matter.

If you do take the matter outside the Council, you should be aware of the confidential nature of the information you possess and only divulge what is absolutely necessary to establish your concern. It is strongly recommended that you seek external legal advice or the advice of a trade union officer before taking this action.

### ***Getting some advice***

If you are unsure about whether or how to use this Code or want independent advice, you may contact the independent charity Public Concern at Work. Their lawyers can give you free confidential advice at any stage on how to raise a concern about serious malpractice at work. Their address is:

Suite 306, 16 Baldwins Gardens, London, EC1N 7RJ  
Tel: 020 7404 6609

You may wish to consider discussing your concern with a colleague first and you may find it easier to raise the matter if there are two (or more) of you who have had the same experience or concerns.

### ***How do I raise my concern?***

You can raise your concern verbally or in writing. Remember that you will need to set out the background and history of the concern, (giving relevant dates wherever possible) and explain the reason why you are particularly concerned about the situation.

The earlier you express the concern the easier it is to take action.

You may invite your trade union representative or a work colleague to be present at any meetings or interviews held in connection with the concerns you have raised.



***What protection will I receive?***

Employment protection

If you raise a genuine concern you will not be at risk of losing your job or suffering any form of retribution.

The Council will not tolerate any harassment or victimisation (including informal pressures) because you have raised a concern and will take action under its Bullying and Harassment Policy. The Council will not apply pressure on you to withdraw a concern.

This also means that where you act in good faith, it does not matter even if you are mistaken.

If, however, you make an untrue allegation maliciously or for personal gain, consideration may be given to taking disciplinary action against you.

Confidentiality

The Council hopes that the protection it offers will encourage you to raise your concerns openly but you can ask that your identity is not disclosed when the matter is being investigated. If you ask for confidentiality, the Monitoring Officer will advise you about whether your concern can be investigated if your identity is withheld. If so your name will not be disclosed unless the Council is required to by law. In some cases it may be necessary to disclose details of your allegation to the police or the Audit Commission, for example where the matter results in criminal proceedings or where the Council has a statutory obligation.

You should understand that if your personal evidence is necessary to prove your claim you might need to consider revealing your identity. The Monitoring Officer can discuss this with you.

Should you require support during an investigation you can contact 'ppcworldwide' the Council's confidential employee support provider.

***How will the Council respond?***

If you have raised your concerns with your line manager, they will be able to keep you informed of what action they are taking to resolve your concerns.

If you raise your concerns with the Monitoring Officer there is a two step process for deciding what action might be appropriate

Step 1

The Monitoring Officer will make initial enquiries to decide whether or not an informal review or an internal investigation is warranted. The Monitoring Officer's decision to proceed or not will be supported by reasons which will be given to you in writing.



Some concerns may be resolved by agreed action without the need for investigation. If urgent action is required this will be taken before any investigation is conducted.

### Step 2

If an investigation is necessary the Monitoring Officer may ask internal audit to carry this out, or in more serious cases, refer the matter to the police for investigation. The Monitoring Officer will tell you who is handling the case and what further assistance may be required from you. Your identity will not be revealed to the audit officer if you have asked for confidentiality but you will be told how to contact the investigator if you want to do so.

The Monitoring Officer will also try to give an indication of

- how it is proposed to deal with the matter;
- how long it will take to provide a final response;
- whether any initial enquiries have been made; and
- staff support mechanisms.

The outcomes of investigations carried out by internal audit or management will be reported back to the Monitoring Officer. Wherever possible you will be given feedback about the investigation but sometimes the actions that are proposed involve a duty of confidence that the Council owes another person, for example when taking disciplinary proceedings, and it is not possible to tell you about those actions.

If you are required to give evidence in criminal or disciplinary proceedings the Council will arrange for you to receive advice about the procedure.

### ***Reviewing the outcome***

This Code is intended to provide you with an avenue to raise your concerns. If you are unhappy with the outcome of any investigation and can provide additional information not considered before, you can ask the Monitoring Officer to review an investigation.



**Legislation:**

Public Interest Disclosure Act  
Local Government Act

**Links to relevant information:**

**Policies:**

Anti-Fraud & Corruption Policy  
Bullying and Harassment Policy  
Grievance procedures

**Standard documentation:**

**Employment Law:**

Local Government Act 1972  
Public Information Disclosure Act

**Other:**

**For further advice contact :**

HR Services Manager  
HR Advisor/Asst HR Advisor  
Employee Relations Officer  
Head of HR  
Head of Legal &  
Democratic Services

**Last Updated :**

December 2008

**To be reviewed no later than :**

December 2010

**Policy Sponsor :**

Monitoring Officer

**TITLE OF REPORT: DCLG CONSULTATION DOCUMENT ON CHANGES TO THE CODE OF CONDUCT**

REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

- 1.1 A report on the consultation paper issued by the Department of Communities and Local Government (DCLG) on proposed changes to the Code of Conduct for members.

**2. FORWARD PLAN**

- 2.1 Not relevant.

**3. BACKGROUND**

- 3.1 The Code of Conduct was first introduced into local government in 2001 and reviewed in 2007. A consultation to further revise the revised Code was issued by DCLG on the 1 October 2008. The consultation closes on 24 December 2008.
- 3.2 The consultation document is called '*Codes of conduct for local authority members and employees – a consultation*' and can be found on the DCLG website ([www.communities.gov.uk](http://www.communities.gov.uk)). A copy of it is attached at Appendix A.
- 3.3 The Order introducing the revised Code came into force on 3 May 2007 and was adopted by this Council on 17 May 2007.
- 3.4 The need for these further changes to the Code appear to have arisen out of the judgment by Mr Justice Collins in the Livingstone case that the Code could not be construed to apply to a member in his private life. The Code was found only to apply when a member is performing the functions of his office. Legislative changes were needed to apply the Code to members acting outside of their official capacity.
- 3.5 In October 2007 the Local Government and Public Involvement in Health Act amended the Local Government Act 2000 to introduce new sections 50(4A) to (4B) indicating paragraphs of the Code of Conduct which were to apply to conduct in an official capacity and where criminal offences committed by members acting outside of their official capacity might amount to breach of the Code.
- 3.6 Those legislative changes have not yet been brought into force. The intention of the consultation is to clarify where criminal activity might bring the Code of Conduct to bear. The consultation asks a series of questions which are set out below together with a draft proposed response which has been suggested by the Chair, Vice Chair and Deputy Monitoring Officer.
- 3.7 The consultation deals also with the introduction of a proposed code of conduct for officers but that is not dealt with in this report.

#### 4. ISSUES

**Q1 – Do you agree that the Members’ Code should apply to a member’s conduct when acting in their non-official capacity?**

It is important that the Code of Conduct for Members should apply to at least some conduct in a member’s private life. A member of the public makes very little distinction between the public and private life of a councillor and conduct in a Councillor’s private life can have a damaging effect upon his public office and the reputation of the Council.

However, the Standards Committee considers that such criminal conduct should only be relevant to the Code of Conduct where there has been a conviction secured and should not be permitted to apply to conduct which does not result in a criminal offence, i.e. matters under investigation by the Police should not be sufficient to entitle a member of the public to bring a complaint that there has been a breach of the Code.

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

The definition of “criminal offence” excludes criminal offences which result in a fixed penalty notice, and therefore limits breach of the Code to only more serious offences.

The Standards Committee thinks that more clarity is needed around the definition of “criminal offence” and the exclusion of fixed penalty notices from that definition. It is understood that fixed penalty notices are civil matters and an alternative to prosecution, but how are some fixed penalty offences less likely to bring the authority into disrepute? For example some minor theft offences permit a fixed penalty notice to be offered as an alternative to prosecution and some fixed penalty offences can directly impact upon a members remit e.g. what if the Portfolio Holder for the Environment receives a fixed penalty notice for the unauthorised tipping of waste materials?

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

What about those members also who might choose to challenge a fixed penalty notice through the Courts? Where they are subsequently found to have committed the offence, are they to be disadvantaged because they have chosen to challenge the notice? Might this discourage members to challenge a fixed penalty notice because of fear of losing their immunity from breach if they do?

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

The conduct provisions of the Code apply only when a member is acting in an official capacity. The consultation proposes that “official capacity” should be defined as “being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.”

The use of the term “representative” within this definition is vague and the Standards Committee considers that this may fuel further debate about what “representative actually means”. It is proposed therefore that the definition be amended so that official capacity means “ being engaged in the business of your authority, including the business of the office to which you are elected or appointed, or being engaged in the business of a body to which you have been appointed by, on the nomination of or approval of your authority”

**Q4 – Do you agree that the members’ code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?**

This appears to be a sensible proposition however the Standards Committee would like further information on the practicalities of making this work as a local authority has no access to the PCN. How would such details be capable of confirmation?

In addition the Standards Committee would like to know whether this is to apply to former convictions or only those which occurred whilst in office?

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

The Standards Committee is already of the opinion that no action should be possible for breach of the Code of Conduct until a criminal conviction has been secured (see question 1).

The Standards Committee considers that on occasion the interval between the conduct and the conviction can be lengthy and the Councillor’s alleged conduct may reflect poorly upon the ability of the Standards Committee to act, however the Standards Committee considers it premature for the Monitoring Officer to be requested to bring an investigation whilst the Police are also still investigating the matter. It would place the Standards Committee in the position of Judge and jury and for that reason is unacceptable.

However the Standards Committee considers that further clarification is needed around the right of appeal. What does completion of the “criminal process” mean? Can the Standards Committee consider the matter only after the whole appeals process has been exhausted or should it be possible for it to hear complaints after conviction but before an appeal is heard? This would be the Standards Committee’s preferred option as any further delay beyond conviction may risk bringing the process into serious disrepute if no complaint can even be entered until so long after the events occurred. The Standards Committee should however have the option to suspend investigation into any complaint pending an appeal if they consider it appropriate.

The Standards Committee is of the opinion that their stance best complies with the primacy of the proposition that a person is innocent until proven guilty. Evidence of the conviction should enable the Standards Committee to proceed rapidly with consideration of the complaint following conviction.

**Q6 – Do you think that the amendments to the Members’ Code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?**

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

The Standards Committee agrees that the proposed amendment to make clear that paragraphs 8(1)(a)(i) and (ii) refers to another body of which you are a member, or which exercise functions of a public nature and not a reference to the authority itself.

The Standards Committee agree the suggestion to amend paragraph 8(1)(a) to clarify that a member is required to register any gift or hospitality with an estimated value of at least £25. The Committee further thinks however that this level should be subject to an inflationary rise to £75/£100.

The Standards Committee agrees that paragraph 10 (1) and (2) could certainly be clarified if they were re-drafted to avoid the current double-negative. This Paragraph would also benefit from further amendment because of the lack of clarity as to when the determination of an approval, consent, licence, permission is “in relation to” the member. The Standards Committee suggests that this be changed to say “determination of an application for approval..... made by you or on your behalf.”

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

The Standards Committee agrees that existing registrations of interests should carry forward when the revised Code is introduced.

*Additional Suggested Amendments*

*Application to suspended Members*

The majority of the Code as currently drafted does not apply to a member when they are suspended. The Standards Committee suggests an amendment to paragraph 2(2) to provide that a member’s conduct in relation to his/her authority shall be treated as being in an official capacity notwithstanding that the member was suspended at the time of the conduct

*Disclosure and misuse of confidential information in private life*

The disclosure of confidential information which a member has obtained through their connection with the authority, or its use for personal advantage, in private life, would be an example of serious misconduct, but at present this is not covered by the Code of Conduct.

*Value of Shareholdings*

The Code currently applies a nominal value of £25,000 as the threshold for registration and declaration of shareholding. However a shareholding with a £25,000 nominal

value may have little or no trading value, and similarly a member may have one or two £1 shares in a private company, which may have a trading value in millions. It is also limited to one class of securities, so that a member may have £20,000 nominal value in each of five classes of securities, and still have no requirement to disclose or register that interest. The Council therefore suggests that it would be appropriate to amend Paragraph 8(1)(a)(vi) to provide that a member has a personal interest in “any person or body who has a place of business or land in your authority's area, and in whom you have a beneficial interest in the securities of that person or body that exceeds a nominal value of £25,000, a current market value of £25,000 or 1/100th of the total issued share capital”.

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

Disclosure of Public Service Interests

The Standards Committee has not found any benefit from the introduction of paragraph 9(2) in the 2007 revisions, which allows a member to claim an exemption from declaring an interest in a public body to which they have been nominated provided this is not also a prejudicial interest. The Deputy Monitoring Officer has already sought legal advice on the interpretation of this section. It introduces a problem in respect of prejudicial interests, in that by the time a member would come to disclose such an interest, they would already have been required to leave the room. In most cases where this exemption applies the members decide to leave the room in any event and it is suggested that this exemption be deleted.

Overview and Scrutiny Committees

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

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

Extension to informal meetings and correspondence

The definition of “meetings” in paragraph 1(4) is currently very limited and might benefit from extension to “informal meetings between a member and one or more other members or officers of the authority, other than group meetings”, and to require members to disclose that they are members in any correspondence with the authority,

even if that correspondence is in a private capacity. This makes the position absolutely clear.

#### Application to Ward Councillor Decision-Making

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

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

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

The Standards Committee considers that it is appropriate to require members to give a fresh undertaking to observe the revised Code of Conduct following its adoption by the authority of which they are a member. The two month period for such undertakings was applied in 2001, when the Code of Conduct was first adopted by each authority and is perfectly reasonable, but if an undertaking is not given within that period then the member concerned is not disqualified but is prohibited from acting as a member of that authority until they have given such an undertaking.

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

The General Principles are supposed to be the enduring principles which underlie the Code. As such they should not be changed unless there are overriding reasons for doing so. A duty to uphold the law already exists within Principle 8 and so adding a new Principle of not engaging in criminal conduct is unnecessary.

**Q11 - Do you agree with the broad definition of "criminal offence" for the purpose of the General Principles Order? Or do you consider that criminal offence should be defined differently?**

As the Standards Committee does not consider that it is necessary to change the General Principles such an definition is not required.

**Q12 - Do you agree with this definition of “official capacity” for the purpose of the General Principles Order?**

The Standards Committee does not consider that such a definition is necessary.

**5. LEGAL IMPLICATIONS**

- 5.1 The legal implications have been dealt with throughout this report. Following the consultation, DCLG will consider the responses with a view to amending the Code of Conduct and enacting the relevant statutory provisions not yet in force. There is no timetable given by DCLG for this purpose.

**6. FINANCIAL AND RISK IMPLICATIONS**

- 6.1 Should the Code of Conduct be extended to apply to criminal conduct in private life it is not anticipated that this will impact upon the ability of the Standards Committee or the Deputy Monitoring Officer to resource the local referrals process. There are therefore no financial or risk implications arising from this report.

**7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

- 7.1 None.

**8. RECOMMENDATIONS**

- 8.1 That the Standards Committee endorse the written responses to the consultation set out in this report and authorises the Deputy Monitoring Officer to send its response to DCLG before the consultation deadline of 24 December 2008.

**9. REASONS FOR RECOMMENDATIONS**

- 9.1 To give an adequate response on the proposed changes to the Code.

**10. ALTERNATIVE OPTIONS CONSIDERED**

- 10.1 There is no alternative option.

**11. APPENDICES**

- 11.1 Appendix A - DCLG consultation paper “Communities in control: Real people, real power. Codes of conduct for local authority members and employees”

**12. CONTACT OFFICERS**

- 12.1 Kim Sawyer Deputy Monitoring Officer x4561  
kim.sawyer@north-herts.gov.uk

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

**A consultation**



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

**A consultation**

October 2008

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# Chapter 1: The consultation and how to respond

## Communities in control consultation papers

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

## About this consultation

- 1.3 The proposals in this consultation paper relate to relevant authorities in England and police authorities in Wales.
- 1.4 Following the local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, the Local Government and Public Involvement in Health Act 2007 established a more locally-based conduct regime for local authority members centred on local authority standards committees. Under the new devolved regime, the Standards Board for England has become a light-touch strategic regulator, responsible for monitoring the operation of the conduct regime and giving support and guidance to standards committees and monitoring officers in discharging their new functions.
- 1.5 As part of the changes to the conduct regime, a new model code of conduct for local authority members, the Local Authorities (Model Code of Conduct) Order 2007, was introduced with effect from May 2007, on the basis that the provisions of the members’ code would be reviewed in light of early experience of its practical operation.
- 1.6 Chapter 2 of this paper seeks views on proposals to clarify the members’ code in its application to members’ conduct when acting in a non-official capacity. It also seeks views on the operation of, and proposed revisions to, the members’ code, including reconfiguring the members’ code into two distinct sections, the first dealing with members’ conduct in their official capacity, the second dealing with members’ conduct in their non-official capacity. Finally, it seeks views on associated amendments to the Relevant Authorities (General Principles) Order 2001 to clarify its application to members’ conduct in their non-official capacity.

- 1.7 Chapter 3 of this paper seeks views on the proposed introduction of a model code of conduct for local government employees, which will become part of such employees' terms and conditions of employment.
- 1.8 Particular questions on which we would welcome comments are set out in each chapter and summarised in **Annex A**. In order to aid your consideration of the proposed amendments to the current members' code, the substance of the 2007 code is reproduced at **Annex B**.
- 1.9 We are minded, subject to responses to this consultation, to implement the proposals in this consultation paper, so that they come into effect in line with the local government elections 2009.

## Who are we consulting?

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

## How to respond

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

Karl Holden  
Conduct and Council Constitutions Team  
Communities and Local Government  
Zone 5/B2, Eland House  
Bressenden Place  
London  
SW1E 5DU

e-mail: [conductcode@communities.gsi.gov.uk](mailto:conductcode@communities.gsi.gov.uk)

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

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

## What will happen to the responses?

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

## Publication of responses – confidentiality and data protection

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

## The consultation criteria

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

## Additional copies

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

## In context – previous consultations and relevant legislation

- 1.20 The local government White Paper, *Strong and Prosperous Communities*, issued in October 2006, set out the Government's proposals to put in place a clearer, simpler and more proportionate model code of conduct for members which would include changes to the rules on personal and prejudicial interests. This announcement followed a consultation by the Standards Board for England, *A Code for the future*, in February 2005 and the Discussion Paper *Conduct in English Local Government*, issued by the then Office for the Deputy Prime Minister in December 2005.
- 1.21 The policy proposals took form in the January 2007 consultation document, *Consultation on Amendments to the Model Code of Conduct for Local Authority Members*, which proposed the combination of the four different model codes of conduct that existed at the time (for local authorities, parish councils, national parks and police authorities) into a single consolidated model code.

- 1.22 The Local Authorities (Model Code of Conduct) Order 2007 came into force on 3 May 2007. With the members' code now in place for over a year, we believe this is an appropriate time to examine how well it has functioned in practice and consider any revisions that may be required. The proposed amendments to the members' code set out in this paper reflect discussions with the Standards Board and, in particular, their experience of the practical operation of the 2007 members' code over the last year.
- 1.23 Following the 2006 local government White Paper and the introduction of the 2007 members' code, the Local Government and Public Involvement in Health Act 2007 made provision clarifying the law in relation to the application of the conduct regime to the conduct of members in their non-official capacity. This paper therefore also invites comments on proposals to revise the members' code and the general principles order to address the issue of the application of the conduct regime to the conduct of members in their non-official capacity.

### Code of conduct for local government employees

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

# Chapter 2: Code of conduct for local authority members

## What is the code of conduct for?

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

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

- 2.5 Trust in our local authority members is one of the cornerstones of local democracy. Members should inspire trust and confidence from those who elected them, set an example of leadership for their communities and should be expected to act lawfully even when they are not acting in their role as members.
- 2.6 This view was supported by those who responded to the Standards Board for England's consultation on the members' code in 2005. Responses indicated a clear view that a member's conduct in a non-official capacity was an issue that they considered should be covered by the members' code, particularly where that conduct amounts to a criminal offence.
- 2.7 It has always been our intention for the members' code to apply to a limited extent to the

conduct of members in a non-official capacity. We wish now to clarify which provisions of the members' code apply in a member's official capacity and to put beyond doubt which provisions apply to a member's conduct in a non-official capacity.

2.8 The need to clarify what conduct in a member's non-official capacity is covered by the members' code arose as a consequence of a court judgment in 2006. This cast doubt on the ability of the code to cover members' conduct not linked to the performance of their public duties. As was made clear by Ministers during the passage of the Local Government and Public Involvement in Health Act 2007, we consider that certain behaviour, even when there is no direct link to the member's official role, can have an adverse effect on the level of public trust in local authority members and local government as a whole.

2.9 We propose therefore that the new members' code should, in the section covering the conduct of members in their non-official capacity, contain the following provision prohibiting particular conduct where that conduct would constitute a criminal offence:

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

#### **Consultation Question 1:**

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

## **Definition of 'criminal offence' and 'official capacity'**

2.10 The Local Government and Public Involvement in Health Act 2007 gave the Secretary of State the power to define, for the purposes of the members' code, what constitutes a 'criminal offence'. We propose for the purpose of the members' code, that 'criminal offence' be defined as any criminal offence for which the member has been convicted in a criminal court, but for which the member does not have the opportunity of paying a fixed penalty instead of facing a criminal conviction.

2.11 Our intention is that offences capable of attracting fixed penalty notices should be excluded from the remit of the conduct regime. We consider that this approach will ensure that the most minor criminal offences, for example minor motoring offences, parking offences and dropping litter as well as cautions and orders falling short of a criminal conviction by a court, will not be included in the remit of the members' code. However, serious criminal offences which we consider should come under the remit of the members' code, such as assault, harassment, fraud and offences relating to child pornography will be included in the remit of the code.

2.12 We propose that the Standards Board for England will issue guidance for local authority standards committees on how a criminal offence should be treated in its application to the conduct regime.

### Consultation Question 2:

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

2.13 The Local Government and Public Involvement in Health Act 2007 also gave the Secretary of State power to define, for the purposes of the members' code, what constitutes 'official capacity'.

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

### Consultation Question 3:

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

## Offending abroad

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

### Consultation Question 4:

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

## What does this mean?

2.16 Our proposals would have the effect of providing that the only conduct in a member's non-official capacity which is engaged by the code, is conduct which constitutes a criminal offence, as defined in paragraph 2.10 above. The code may only then be applied to that conduct when the evidence that the member's conduct constituted a criminal offence is provided by the criminal conviction of the member in the courts.

2.17 This would mean, for example, that a member who was convicted of a criminal offence of assault or harassment could be held to have breached the code, even if the conduct, which led to the conviction took place entirely outside the member's official capacity.

## Criminal conviction of a member

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

## The conduct regime

2.19 At present, investigations into alleged breaches of the members' code are triggered by a written allegation made to the standards committee of the local authority concerned. We propose that this continue to be the case when dealing with allegations of misconduct in relation to a member's conduct in their non-official capacity.

2.20 Where the allegation involves criminal activity that is, at the time of the allegation being made, being investigated by the police or prosecuted through the courts, we propose that the standards committee or the Standards Board, as the case may be, would cease their investigation process until the criminal process had been completed. Any subsequent action under the conduct regime in respect of a member's private conduct would follow the conclusion of the criminal procedure. The member would not be suspended during the period of the criminal process.

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

### Consultation Question 5:

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

## Proposed revisions to the members' code

2.22 This consultation paper also seeks views on the following amendments which we propose to make to the provisions of the existing code. The proposed amendments reflect discussions with the Standards Board and, in particular, the Board's experience of the practical operation of the code over the last year.

2.23 In order to aid your consideration of our proposed amendments to the members' code, the substance of the present code is reproduced at **Annex B** to this paper. Guidance on the provisions of the members' code is available on the Standards Board for England's website at [www.standardsboard.gov.uk](http://www.standardsboard.gov.uk)

## Parish councils

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

## Membership of other bodies

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

## Personal interests

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

## Prejudicial interests

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

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

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

## Registration of members' interests

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

### Consultation Question 6:

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

### Consultation Question 7:

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

### Consultation Question 8:

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

## Legislative context

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

**Consultation Question 9:**

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

# Proposed amendments to the General Principles

## What are the General Principles?

2.35 The ten General Principles, contained in the Relevant Authorities (General Principles) Order 2001, are based on the seven principles of public life set out by the Committee on Standards in Public Life. The principles underpin the provisions of the members' code, which must be consistent with these principles.

2.36 The ten general principles are reproduced below. The principles govern the conduct of members, and a failure to act in accordance with them may lead to a failure to comply with the members' code.

### The General Principles

#### *Selflessness*

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

#### *Honesty and Integrity*

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

#### *Objectivity*

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

#### *Accountability*

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

#### *Openness*

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

#### *Personal Judgement*

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

#### *Respect for Others*

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

statutory officers, and its other employees.

*Duty to uphold the law*

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

*Stewardship*

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

*Leadership*

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

## Proposed revisions

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

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

*Duty to abide by the law*

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

**Consultation Question 10:**

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

## Definition of 'criminal offence' and 'official capacity'

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

**Consultation Question 11:**

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

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

**Consultation Question 12:**

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

## Legislative Context

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

# Chapter 3: Model code of conduct for local government employees

## Is an employees' code needed?

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

### Consultation Question 13:

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

## The employees' code in context

- 3.2 In August 2004, the (then) Office of the Deputy Prime Minister consulted on a model code of conduct for local government employees. Responses indicated that the model code of conduct consulted on was not adequate, but also that the universal application of a code to all staff would be needlessly bureaucratic as all employees would be subject to the same code regardless of their position. There was support for following the model of the Welsh code of conduct, which only applies to a certain category of defined senior officer. Alternatively, the code could be restricted to those who exercise executive, regulatory or overview and scrutiny powers under the authority’s scheme of delegation to officers.
- 3.3 Another view in response to the consultation paper was that certain aspects of the code (eg registration of interests), could be limited to senior officers while other more universal aspects should be applicable to all - for instance, it is beyond question that all employees should behave with honesty and integrity.
- 3.4 Many local authorities already have a code of conduct for employees in addition to, or part of, their standard terms and conditions of employment. These codes range from simple statements agreeing to act with propriety to comprehensive documents covering everything from political neutrality to intellectual property matters. These codes of conduct are also integrated into the authority’s discipline procedures.
- 3.5 It is not intended that the employees’ code be a burden on authorities or employees. The code should not constrain an authority’s ability to develop its own code reflecting local needs and conditions. We consider that authorities should be free to adopt supplementary provisions beyond the employees’ code in order to provide their staff with an effective ethical

framework within which to work.

## Application of the employees' code

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

### Consultation Question 14:

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

### Consultation Question 15:

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

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

## Proposed core values

### The model employees' code: core values for all employees

#### General principles

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

#### Accountability

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

## Political neutrality

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

## Relations with members, the public and other employees

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

## Equality

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

## Stewardship

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

## Personal interests

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

Employees should abide by the rules of their authority about the declaration of gifts offered to or received by them from any person or body seeking to do business with the authority or which would benefit from a relationship with that authority. Employees should not accept benefits from a third party unless authorised to do so by their authority.

## Whistleblowing

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

## Treatment of Information

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

## Appointment of staff

Employees of the authority, when involved in the recruitment and appointment of staff, must ensure that appointments are made on the basis of merit. In order to avoid any accusation of bias, those employees must not be involved in any appointment, or any other decision relating to

discipline, promotion or pay and conditions for any other employee, or prospective employee, to whom they are related or with whom they have a close personal relationship outside work.

### Investigations by monitoring officers

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

#### Consultation Question 16:

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

## Beyond the core values

### Who are the 'qualifying employees'?

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

#### Consultation Question 17:

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

## The model employees' code: values for qualifying employees

### Compromising the impartiality of officers of the authority

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

## Using your position improperly

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

## Considering advice provided to you and giving reasons

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

## Personal interest

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

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

These are:

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

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

### Consultation Question 18:

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

### Consultation Question 19:

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

## Prejudicial interest

A prejudicial interest is considered to be a matter which affects the qualifying employee's financial

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

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

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

#### **Consultation Question 20:**

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

#### **Consultation Question 21:**

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

## **Contractors, partners and part time staff**

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

## **Parish councils**

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

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

**Consultation Question 22:**

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

## Legislative context

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

# Annex A: List of consultation questions

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

- Question 1 Do you agree that the members' code should apply to a member's conduct when acting in their non-official capacity?
- Question 2 Do you agree with this definition of 'criminal offence' for the purpose of the members' code? If not, what other definition would you support, for instance should it include police cautions? Please give details.
- Question 3 Do you agree with this definition of 'official capacity' for the purpose of the members' code? If not, what other definition would you support? Please give details.
- Question 4 Do you agree that the members' code should only apply where a criminal offence and conviction abroad would have been a criminal offence if committed in the UK?
- Question 5 Do you agree that an ethical investigation should not proceed until the criminal process has been completed?
- Question 6 Do you think that the amendments to the members' code suggested in this chapter are required? Are there any other drafting amendments which would be helpful? If so, please could you provide details of your suggested amendments?

- Question 7 Are there any aspects of conduct currently included in the members' code that are not required? If so, please could you specify which aspects and the reasons why you hold this view?
- Question 8 Are there any aspects of conduct in a member's official capacity not specified in the members' code that should be included? Please give details.
- Question 9 Does the proposed timescale of two months, during which a member must give an undertaking to observe the members' code, starting from the date the authority adopts the code, provide members with sufficient time to undertake to observe the code?
- Question 10 Do you agree with the addition of this new general principle, applied specifically to conduct in a member's non-official capacity?
- Question 11 Do you agree with this broad definition of 'criminal offence' for the purpose of the General Principles Order? Or do you consider that 'criminal offence' should be defined differently?
- Question 12 Do you agree with this definition of 'official capacity' for the purpose of the General Principles Order?

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

- Question 13 Do you agree that a mandatory model code of conduct for local government employees, which would be incorporated into employees' terms and conditions of

employment, is needed?

- Question 14 Should we apply the employees' code to firefighters, teachers, community support officers, and solicitors?
- Question 15 Are there any other categories of employee in respect of whom it is not necessary to apply the code?
- Question 16 Does the employees' code for all employees correctly reflect the core values that should be enshrined in the code? If not, what has been included that should be omitted, or what has been omitted that should be included?
- Question 17 Should the selection of 'qualifying employees' be made on the basis of a "political restriction" style model or should qualifying employees be selected using the delegation model?
- Question 18 Should the code contain a requirement for qualifying employees to publicly register any interests?
- Question 19 Do the criteria of what should be registered contain any categories that should be omitted, or omit any categories that should be included?
- Question 20 Does the section of the employees' code which will apply to qualifying employees capture all pertinent aspects of the members' code? Have any been omitted?

Question 21 Does the section of the employees' code which will apply to qualifying employees place too many restrictions on qualifying employees? Are there any sections of the code that are not necessary?

Question 22 Should the employees' code extend to employees of parish councils?

# Annex B

## SCHEDULE

### THE MODEL CODE OF CONDUCT

#### Part 1

#### General provisions

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

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

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

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

(4) In this Code—

“meeting” means any meeting of—

(a)  
the authority;

(b)  
the executive of the authority;

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

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

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

##### **Scope**

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

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

(b) act, claim to act or give the impression you are acting as a representative of your authority,  
and references to your official capacity are construed accordingly.

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

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

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

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

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

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

### **General obligations**

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

(2) You must not—

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

(b) bully any person;

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

(i) a complainant,

(ii) a witness, or

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

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

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

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

**4.** You must not—

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

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

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

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

(iv) the disclosure is—

(aa) reasonable and in the public interest; and

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

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

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

**6.** You—

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

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

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

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- (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
- (c) must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986.

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

- (a) your authority's chief finance officer; or
- (b) your authority's monitoring officer,

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

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

## Part 2 Interests

### **Personal interests**

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

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

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

(ii) any body—

(aa) exercising functions of a public nature;

(bb) directed to charitable purposes; or

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

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

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

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

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

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

(vii) any contract for goods, services or works made between your authority and you or a firm in which you are a partner, a company of which you are a remunerated director, or a person or body of the description specified in paragraph (vi);

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

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

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

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

(b) a decision in relation to that business might reasonably be regarded as affecting your well-being or financial

position or the well-being or financial position of a relevant person to a greater extent than the majority of—

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

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

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

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

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

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

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

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

### **Disclosure of personal interests**

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

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

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

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

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

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

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

### **Prejudicial interest generally**

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

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

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

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

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

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

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

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

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

(v) any ceremonial honour given to members; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Part 3**

### **Registration of Members' Interests**

#### **Registration of members' interests**

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

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

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

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

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

### **Sensitive information**

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

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

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

# Annex C: Consultation Code of Practice

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

## The Consultation Criteria

- Consult widely throughout the process, allowing a minimum of
  - 12 weeks for written consultation at least once during the development of the policy
  - Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
  - Ensure that your consultation is clear, concise and widely accessible.
  - Give feedback regarding the responses received and how the consultation process influenced the policy.
  - Monitor your department's effectiveness at consultation, including through the use of a designated consultation coordinator.
  - Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.
- A.3 The full consultation code of practice may be viewed at:  
[www.bre.berr.gov.uk/regulation/consultation/code/index.asp](http://www.bre.berr.gov.uk/regulation/consultation/code/index.asp).
- A.4 Are you satisfied that this consultation has followed these criteria? If not, or you have any other observations about ways of improving the consultation process please contact:

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

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

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**TITLE OF REPORT: POLITICALLY RESTRICTED POSTS**

## REPORT OF THE DEPUTY MONITORING OFFICER

**1. SUMMARY**

- 1.1 A report to advise members of the extension of the role of the Standards Committee to include decisions relating to officers holding politically restricted posts.

**2. FORWARD PLAN**

- 2.1 Not relevant.

**3. BACKGROUND**

- 3.1 In England the responsibility for the granting of exemptions from political restriction has transferred to the Standards Committee with effect from 1 April 2008. The secretary of state is expected to issue guidance to local authorities in order to assist standards committees with this new role.
- 3.2 The first statutory attempt to ensure the political impartiality of those who serve in local government was under the Local Government Act 1972 (LGA 1972) which prevents a councillor from being employed in any capacity by the local authority he is serving.
- 3.3 In 1989, the Local Government and Housing Act 1989 (LGHA 1989) introduced the principle of 'politically restricted posts' and of restricting the political activities of local authority employees. These reforms were made in response to the Widdecombe report which identified issues of concern involving local authority officers and the apparent lack of political impartiality, which can lead to separate loyalties and prejudicial service.
- 3.4 The report distinguished 'twin-tracking', which is where a local authority employee is also an elected Member of another local authority, for special criticism. The concerns included inability to serve the interests of the council on which they sit, and the potential lack of political impartiality. Twin-tracking, involving those holding 'politically restricted posts', is now restricted by the LGHA 1989 which prohibits such activities.

**4. ISSUES**

- 4.1 The effect of including a local authority employee on the list of 'politically restricted posts' is to prevent that individual from having any active political role either in or outside the workplace. Politically restricted employees will automatically be disqualified from standing for or holding elected office, and these restrictions are incorporated as terms in the employee's contract of employment. It is left to the discretion of each authority whether or not to reinstate an employee who resigns his post, and then consequently fights and loses an election.

4.2 In practice, this equates to debarring a substantial number of local government employees from standing for office. Those employees are also restricted from:

- canvassing on behalf of a political party or a person who is or seeks to be a candidate
- speaking to the public at large or publishing any written or artistic work that could give the impression that they are advocating support for a political party

4.3 The cumulative effect of these restrictions is to limit the holders of politically restricted posts to bare membership of political parties, with no active participation within the party permitted.

4.4 Each local authority is under a duty to draw-up and regularly update a list of those posts which are politically restricted. Politically restricted posts fall into three broad categories:

- *Specified posts:*

the Head of the Paid Service (s 4 LGHA)

the statutory chief officers,

non-statutory chief officers

deputy chief officers

the monitoring officer (s 5 LGHA)

the chief finance officer (s 151 LGA)

officers exercising delegated powers, i.e. persons whose posts are for the time being specified by the authority in a list maintained in accordance with Section 100G(2) of the LGA

assistants to political groups

All these post holders are politically restricted without rights of appeal for exemption to the Standards Committee.

- Posts paid at or above a certain level

All posts where the remuneration level is or exceeds the 'spinal column point' 44 on the NJC for Local Government Services scales, which currently equates to a yearly salary of £36,730 (as of 1 April 2008), will be automatically included on the list of politically restricted posts.

Remuneration is a wider term than 'salary level' and would include other variable elements of pay (aside from regional weightings) such as 'acting up'/overtime/shift bonus and performance-related pay elements. Cars and other fringe benefits in kind are not intended to be included.

These post holders are allowed to appeal to the Standards Committee to be exempted from the list, on the grounds that they do not influence policy or speak on behalf of the authority to journalists or broadcasters.

- 'Sensitive' posts

A sensitive post is one which meets one or both of the following duties-related criteria:

(i) giving advice on a regular basis to the authority itself, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented; or where the authority are operating executive arrangements, to the executive of the authority; to any committee of that executive; or to any member of that executive who is also a member of the authority

(ii) speaking on behalf of the authority on a regular basis to journalists or broadcasters

These post holders can appeal to the Standards Committee to be exempted from the list, on the grounds that the authority has wrongly applied the criteria.

#### **4.5 Procedure on appeal**

Employees included in the lists compiled by local authorities on either remuneration-related or duties-related grounds can appeal if they feel that they cannot influence policy, or that the local authority has incorrectly applied the duties-related criteria.

All such appeals require a letter from the applicant formally seeking exemption and a full job description of the post (a 'certificate of opinion' from the authority will also be required in the case of a post-holder at or above the remuneration ceiling).

The Standards Committee will be required to meet to consider whether the criteria has been correctly applied and can either affirm the decision to list the post as politically restricted or lift the restriction. This function cannot be delegated to a sub-committee.

#### **4.6 Advice on procedures**

The secretary of state has not yet issued any detailed advice on the new regimes. In the meantime the general guidance and model certificate of opinion provided in the circular letter (attached as appendix 1) issued by the previous Independent Adjudicator remains helpful in locally transferring the independent adjudicator's role to the Standards Committee.

### **5. LEGAL IMPLICATIONS**

#### **5.1 Restrictions on members becoming officers**

A local authority cannot appoint as an employee in any capacity, any councillor who is currently a member of that authority or who had been a member in the previous 12 months (s.116 LGA 1972).

However, in an authority operating executive arrangements under the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001, a councillor is not precluded from being appointed or elected to a position on the executive which may be described as paid office.

#### **5.2 Restrictions on officers becoming members**

Under s80 of LGA 1972, an authority employee will be disqualified from being elected or holding office as a member of that local authority. This principle also applies to joint authorities under s80, therefore an individual is disqualified from standing or holding

office with that specific authority if he holds any paid office or employment with a local or joint authority.

### **5.3 Politically Restricted Posts**

The main provisions regarding politically restricted posts are set out in Part I of the LGHA 1989 with further details set out in the Local Government (Politically Restricted Posts) Regulations 1990.

### **5.4 Human rights**

The compatibility of political restrictions on local authority posts with an individual's rights under the European Convention of Human Rights was tested in the case of Ahmed and others v UK [1999] 188 ECHR.

The European Court of Human Rights held that the political restrictions did not breach Article 10 (the right to freedom of expression) or Article 11 (the right to freedom of association) of the applicant's Convention rights, as the public has a right to expect that those holding higher level local government office are politically impartial.

## **6. FINANCIAL AND RISK IMPLICATIONS**

6.1 None.

## **7. HUMAN RESOURCE AND EQUALITIES IMPLICATIONS**

7.1 None.

## **8. RECOMMENDATIONS**

8.1 That the Standards Committee note the extended remit of their function in respect of Politically Restricted posts.

## **9. REASONS FOR RECOMMENDATIONS**

9.1 To ensure the Standards Committee have an awareness of their extended role.

## **10. ALTERNATIVE OPTIONS CONSIDERED**

10.1 None.

## **11. APPENDICES**

11.1 Appendix A - Circular letter of the Independent Adjudicator.

## **12. CONTACT OFFICERS**

12.1 Kim Sawyer Deputy Monitoring Officer x4561

## Independent Adjudicator's circular letter to local authorities

Local Authority Chief Executives in  
England  
Chief Fire Officers in England  
Police Authority Clerks in England

THE INDEPENDENT ADJUDICATOR  
(Section 3. Local Government and Housing Act  
1989)  
C/O - Communities and Local Government  
Zone 5/B3  
Eland House  
Bressenden Place  
LONDON  
SW1E 5DU

Enquiries: 020 7944 4262

Fax: 020 7944 4109

E-Mail: [cathryn.evans@communities.gsi.gov.uk](mailto:cathryn.evans@communities.gsi.gov.uk)

Web site: [www.communities.gov.uk](http://www.communities.gov.uk)

August 2002

Dear Chief Executive,

### **Local Government and Housing Act 1989: Circular Letter from the Independent Adjudicator**

#### **Introduction**

1. I was appointed to the post of Independent Adjudicator for both England and Wales on 1 May 1998 and reappointed (for England only) on 1 April 2000. Since my appointment, a number of issues have arisen which I think it would be useful to address in this circular. I am also taking this opportunity (in paragraphs 2-8 below) to include a summary of my duties and the posts to which the restrictions in the Local Government and Housing Act 1989 (the 1989 Act) apply.

#### **The Adjudicator's remit**

2. As you will be aware, the 1989 Act imposes restrictions on political activities by local government staff. Section 3 provides for the appointment of a person (the Independent Adjudicator) to undertake certain prescribed duties relating to these restrictions. These duties are:

- to consider applications from local authority employees for exemption from political restriction in respect of their posts;
- where appropriate, to issue directions requiring a local authority to include a post in the list of politically restricted posts it maintains; and
- to give general advice, following consultation with appropriate parties, on the application of criteria for designation of a politically restricted post.

#### **Posts to which political restrictions under section 2 of the 1989 Act apply**

3. The purpose of Part I of the 1989 Act is to ensure that local authority employees who hold posts involving duties of a politically sensitive nature cannot, at the same time, become or remain a member of another principal local authority. This policy stems from the long established tradition that local government officers involved in advising elected members of their authority should be seen to observe a policy of political neutrality.

## APPENDIX A

4. This policy is important for two main reasons: It is essential to the functioning of the democratic system that members of a local authority should be able to receive impartial advice from its officers, and that its officers should not be influenced by any political bias in the implementation of the authority's policies. It is also vital that members, and those who have elected them, should have complete confidence that their officers will give impartial advice and will act impartially in implementing the authority's policies.

5. In short, those in the business of giving advice to members meeting as the authority or of any committee appointed by it, or of publicly presenting and explaining council policy, are therefore deemed to be "persons holding a politically restricted post". This term is defined in section 2(1) of the 1989 Act and consists of three broad categories of local government officer:

(i) the head of the authority's paid service, the statutory and non-statutory chief officers, the deputy chief officers, the authority's monitoring officer, political assistants under section 9 of the 1989 Act, and any other person specified by the authority in a list maintained in accordance with relevant powers set out in section 2(1)(g) of the 1989 Act;

(ii) those whose annual rate of remuneration exceeds the level specified in Section 2(2)(a) of the 1989 Act ("the prescribed level", currently spinal column point 44 of the national scale) - **but see paragraph 6 below which explains that it is important to be clear that, ultimately, it is not a person's salary level which determines whether their post is politically restricted.**

(iii) those officers whose annual rate of remuneration is less than the prescribed level but whose duties consist in, or involve, one or other of the duties identified in Section 2 (3) of the 1989 Act, i.e.:

(a) giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority or to any joint committee on which the authority are represented; and

(b) speaking on behalf of the authority on a regular basis to journalists or broadcasters.

6. In relation to categories (ii) and (iii) above, the ultimate test of whether an individual post is, in fact, politically sensitive, will depend on the nature of the duties the post regularly entails. Every officer falling within these two categories may be entitled to exemption from political restriction if, in summary, the nature of the duties of that post do not require the postholder to be politically neutral.

7. With effect from 11 July 2001, the Local Authorities (Executive and Alternative Arrangements)(Modification of Enactments and Other Provisions)(England) Order 2001 amended section 2(3) of the 1989 Act. Accordingly, political restrictions also apply to those local government staff whose posts entail giving advice on a regular basis to the executive of the authority, or a committee or member of the executive.

8. The Minister for Local Government has also confirmed [during the Committee stage of 8 June 2000 on the Local Government Bill, now the Local Government Act 2000,] that it is the Government's belief that the principle of political restricted posts should be upheld. However, the Government also recognises that following the European Court ruling, (Ahmed and Others v UK), a review is needed to ensure that those restrictions bite at the right level. The review is to be taken forward in consultation with the LGA, Employers Organisation and public sector unions.

### **The local authority "Certificate of Opinion"**

9. One issue which has often delayed the application process is inaccurate wording in the local authority "certificate of opinion" which the legislation requires should accompany an application to the

## APPENDIX A

Independent Adjudicator. I have attached a model certificate to act as a guideline for local authorities. It is necessary for the certificate of opinion to state "whether or not, in their opinion, the duties of the post fall within subsection (3)" of the 1989 Act. It is clear from the wording of the Act that "their opinion" means the opinion of the local authority.

10. For local authorities which are operating executive arrangements under the Local Government Act 2000, the function of issuing a certificate of opinion is the responsibility of the authority's executive and can be exercised in accordance with the provisions of the 2000 Act, including by individual members of the executive and officers.

11. For local authorities which have not yet adopted a new constitution under the 2000 Act or which are operating alternative arrangements, it remains open to the local authority to delegate the function of issuing a certificate of opinion to an officer under section 101 of the Local Government Act 1972.

12. The signing of the certificate of opinion should be delegated to an appropriate officer. By virtue of section 234 of the 1972 Act, the certificate of opinion may be signed on behalf of the authority by the proper officer of the authority. In my view, the authority's Monitoring Officer would be a particularly appropriate officer to discharge this responsibility.

**Giving advice on a regular basis to the authority themselves, to any committee or sub-committee of the authority, to any joint committee on which the authority are represented, to the executive of the authority, or to a committee or member of the executive**

13. In relation to applications for exemption, it is sometimes suggested that because a postholder gives advice to elected members on a regular basis, that officer's post is brought within the terms of section 2 (3). This is not so. The advice which is given must be provided to the authority itself (i.e. the full council); to a committee, sub-committee or joint committee; to the executive; or to a committee or member of the executive.

14. Secondly, the sub-section refers to giving advice on a "regular basis". As my predecessor pointed out in his Circular Letter No. 4 of 3 December 1990, something more than an occasional attendance to present a formal report to a committee is needed to establish that advice is given on a regular basis. In cases of doubt it is useful to have a list of:

- (i) the number of times over, say, the previous twelve months, that the post-holder has provided a report to an individual member of the executive or either attended, or provided a report for, those groups or individuals listed in paragraph 14; and
- (ii) a description of the contents of such a report including whether the report embodied advice or recommendations and whether the post holder was required to speak at the meeting.

### **Overview and Scrutiny Committees**

15. Section 21 of the Local Government Act 2000 (the 2000 Act) stipulates that executive arrangements by a local authority must include provision for the appointment of one or more committees of the authority, referred to as overview and scrutiny committees. Regulation 6 of the Local Authorities (Alternative Arrangements) (England) Regulations 2001 requires any authority operating alternative arrangements to appoint one or more overview and scrutiny committees. It is worth making clear that overview and scrutiny committees (under executive or alternative arrangements) are "committees of the authority" and, therefore, that the giving of advice on a regular basis to overview and scrutiny committees and sub-committees comes within the scope of section 2(3)(a) of the 1989 Act.

**Applications from those not yet in post**

16. There has been a number of applications in the last year from people who have been offered a politically restricted post in a local authority but they either plan to be, or are already, a member of another local authority. I propose here to follow the example of my predecessor in considering applications from those who have been offered a job in a local authority as long as those applicants have had a formal job offer and can provide a certificate of opinion from the (employing) authority. I will not, however, entertain applications from those who are only considering applying for a post in a local authority but who have not received a job offer.

**Officers who hold an exemption granted by the Independent Adjudicator transferring to employment with another local authority**

17. Officers who have been granted exemption from political restrictions in respect of their post with their present employing authority who obtain employment in a politically restricted post with another local authority and who wish to continue their exemption must apply to me for a further exemption. The original exemption is not a passport which can be transferred to another authority or to another post. This is because the 1989 Act requires the application to be from a postholder in respect of a particular post and accompanied by a Certificate of Opinion relating to the duties of that post at the time of the application for exemption. As mentioned in paragraph 16, I will be willing to consider an application from officers who have been offered a politically restricted post with another authority before they commit themselves to a formal acceptance of the post.

**Elections**

18. If standing for election, it is in the interests of those applying for exemption from political restriction to make an application to their employing local authority for a certificate of opinion and then to submit their application for exemption to me in plenty of time before they intend to stand for election.

**Lists of Politically Restricted Posts**

19. I would also remind all local authorities of the requirement in Section 2 of the 1989 Act to maintain an up to date list of their politically restricted posts.

**Change of address**

20. It has come to my notice that a number of applications for exemption from political restriction are still being sent to an obsolete address for the former Department of the Environment, Transport and the Regions. The correct address to send applications is as follows:

Independent Adjudicator  
C/O William Tandoh  
Democracy & Local Governance  
Communities and Local Government  
Zone 5/G10 Eland House  
Bressenden Place  
London  
SW1E 5DU

Tel: 020 7944 8765

Fax: 020 7944 4109

e-mail: [william.tandoh@communities.gsi.gov.uk](mailto:william.tandoh@communities.gsi.gov.uk)

Yours Faithfully,  
Jeffrey Greenwell