

**TO:** Standards Committee

**DATE:** Thursday 20<sup>th</sup> November 2008

**SUBJECT:** A response by the Standards Committee to the Consultation on a Code of Conduct for Local Authority Members and Officers

**BY:** Report of the Director of Corporate Services

**Classification:** Unrestricted –

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**Summary:** The report sets out matters relating to the consultation on revisions to the Member's Code of Conduct.

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**Implications:**

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Human Resources Implications - none

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Finance Implications - none

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Legal Implications -none

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Crime & Disorder Implications (Section 17) - none

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Equalities & Diversity Implications -none

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Sustainability Implications -none

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Risk and Health and Safety Implications -none

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Corporate Plan Implications: ***High performing organisation***

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**Decision Required:**

- 1. The Standards Committee adopts this report and makes representations to CLG accordingly, and**
- 2. The Standards Committee note that the issues relating to the draft Employees' Code will be considered by the Head of Organisational Development**

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## **Introduction**

1. The Department for Communities and Local Government (CLG) has issued a consultation paper (relevant extract attached), seeking views on specific issues relating to amendments to the Code of Conduct for Members. The consultation also deals with the introduction of a Code of Conduct for Employees, which will be dealt with separately. Views are sought by 24 December 2008, with a view to implementation in time for the local elections in May 2009. This report is based on a paper shared by Peter Keith Lucas of Bevan Britten at the training session held on 22<sup>nd</sup> October 2008.

## **The Nature of the Consultation**

2. It appears that CLG has consulted on specific questions, but has not provided proposed amended text for the Members' Code. The questions on which views are sought are far from comprehensive and there are a number of further issues which practitioners need to be addressed in relation to both Codes.

3. This report sets out a suggested response by the Council to the specific questions posed by CLG and a more general commentary on the consultation.

**It is recommended that –**

- 1. The Standards Committee adopts this report and makes representations to CLG accordingly, and**
- 2. The Standards Committee note that the issues relating to the draft Employees' Code will be considered by the Head of Organisational Development**

## **Code of Conduct for Local Authority Members and Officers**

### **A Suggested Response to the Consultation**

#### **Code of Conduct for Members**

##### **Responses to the specific questions:**

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

It is clear that some conduct in private life can reflect upon a member’s suitability to continue as a member. It is therefore important that the Code of Conduct for Members should apply to at least some conduct in a member’s private life.

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

CLG’s intention is that, by excluding criminal offences which result in a fixed penalty notice, the application of the Code should be limited to the more serious offences,. However, the proposed wording is insufficiently precise, as it can be interpreted as offences for which a fixed penalty notice is not available, or as an offence in connection with which the individual member was not given the option of a fixed penalty notice.

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

Even if the specific incident was at a level appropriate for a fixed penalty notice for fly-tipping, the offence would so directly relate to the member’s responsibilities within the authority that it would be directly relevant to their credibility and that of their authority, and accordingly the Code of Conduct should be capable of responding to that event. Where the offence is minor, or is not directly relevant to their work as a member, there remains the option for the Standards Committee (Assessment Sub-Committee) to resolve not to take any action in respect of it. Accordingly, there is no loss and considerable advantage in including all criminal offences, whether they result in actual prosecution or a fixed penalty notice.

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

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

The basic general conduct provisions of the Code apply only when a member is acting in **an official capacity**. CLG proposes that “official capacity” should be defined as “being engaged in the business of your authority, including the business of the office to which you are elected

or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.”

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

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

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

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

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

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

There are three aspects to this question:

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

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

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

The Council recognises that it would be wrong to encourage a standards investigation which interfered with the criminal investigation. But where there is a long gap between the events and a conviction it discredits the standards

system if no action can be taken, especially where the member's guilt may be very evident, or he/she may even have admitted guilt. Accordingly, there should be no bar on standards investigations and proceedings in advance of conviction

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

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

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

**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?**

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.

Membership of other bodies

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

Registration of Gifts and Hospitality

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

Prejudicial Interests

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

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

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

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

#### Additional Suggested Amendment – Gifts and Hospitality

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

#### Additional Suggested Amendment – Close Association

Whilst The Council understands the intention of the 2007 Code amendment to extend beyond "friends" to business colleagues and enemies, the phrase "person with whom you have a close association" is extremely vague. The Standards Board for England's description of the phrase is of little assistance: "A person with whom you have a close association is someone that you are in either regular or irregular contact with over a period of time who is more than an acquaintance. It is someone a reasonable member of the public might think you would be prepared to favour or disadvantage when discussing a matter that affects them. It may be a friend, a colleague, a business associate or someone whom you know through general social contacts."

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

**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?**

#### Additional Suggested Amendment – Overview and Scrutiny Committees

Paragraph 11 provides that a member of the authority's executive will have a prejudicial interest in the matter when he/she is interviewed by the authority's Scrutiny Committee in respect of an executive decision which he/she has made. The Standards Board for England's advice has been that the power of the Scrutiny Committee to require the attendance of the member overrides the Code, but there is no clear basis for this assertion. On the plain words of the Code of Conduct, in the absence of any such exception in the legislation, it would appear that the executive member is required to attend, but then has a prejudicial interest and would be in breach of the Code of Conduct if he/she

remained. Accordingly, in line with the suggested amendment for members giving evidence before Standards Committees, the Council would suggest that the exception in Paragraph 12(2) be extended to provide that attendance to give evidence at the request of the Scrutiny Committee should not be a breach of the Code of Conduct.

**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.**

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

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

Additional Suggested Amendment – Private Representations

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

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

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

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

(a) do so on the basis of the merits of the circumstances and in the public interest

(b) have regard to any relevant advice provided by the authority’s officers – in particular by:

(i) the Chief Finance Officer

(ii) the Monitoring Officer

(iii) the Chief Legal Officer, who should be consulted whenever there is any doubt as to the authority’s powers to act, or as to whether the action proposed lies within the policy framework agreed by the authority; where the

legal consequences of action or failure to act by the authority might have important repercussions.”

**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?**

It is suggested that it is appropriate to require members to give a fresh undertaking to observe the revised Code of Conduct following its adoption by the authority of which they are a member. The two month period for such undertakings was applied in 2001, when the Code of Conduct was first adopted by each authority and is perfectly reasonable, but it is equally certain that in some authorities there will be members who fail to give such undertaking within that time. We therefore suggest that it would be appropriate, if the opportunity exists to amend the 2000 Act, to provide a basic requirement to give an undertaking within two months, and that if an undertaking is not given within that period then the member concerned is not disqualified but is prohibited from acting as a member of that authority until he/she has given such an undertaking.

**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.) Accordingly the Council is of the view that adding a general and unrestricted Principle of not engaging in criminal conduct is unnecessary.

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

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

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

The Consultation Paper suggests that this new General Principle should be limited to conduct when “you are engaged in the business of your authority, including the business of the office to which you are elected or appointed, or acting, claiming to act or giving the impression that you are acting as a representative of your authority.”

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

### **Code of Conduct for Employees**

Members are asked to note that this has been referred to the hHead of Organisational Development. It should be noted that there is a fundamental difference between being an elected member and a council employee. It is suggested that a general response be made to the effect that any Code of conduct for Employees must be subject to the normal principles of employment law and must compl with Human Rights and Data Protection legislation.





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

**A consultation**

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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 an 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.