

26 MARCH 2007

ITEM

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MINUTES – 07 NOVEMBER 2006

1 – 4

To confirm and sign the Minutes of the meeting held on 07 November 2006 as an accurate record.

APOLOGIES FOR ABSENCE

DECLARATION OF INTERESTS

If a Councillor has any personal or prejudicial interests in a particular report, they should declare the interest.

A Councillor should not take part in the discussion or vote on any matter in which they have a prejudicial interest. They should withdraw from the meeting while the matter is under discussion unless the disability to discuss the matter has been removed by the Standards Committee.

DCLG CONSULTATION PAPER ON A REVISED MODEL CODE OF CONDUCT FOR MEMBERS

4 - 39

The DCLG consultation on proposed revisions of the Members' Code of Conduct, circulated to all Local Authorities by DCLG, closed on 9 March.

The Council's corporate response to the consultation exercise, incorporating the views of councillors and independent members, is attached for the Committee's information (Appendix 1).

A copy of the proposed revised Code of Conduct and the DCLG consultation paper is also attached (Appendix 2).

6th ANNUAL ASSEMBLY OF STANDARDS COMMITTEES - "GETTING DOWN TO DETAIL" – ICC BIRMINGHAM 15 & 16 OCTOBER 2007

The Sixth Annual Assembly of Standards Committees will be taking place in Birmingham on 15 & 16 October 2007. The theme of the meeting will be "Getting down to detail", and is aimed at preparing the way for the local filter system for complaints, which will see local authorities placed at the centre

and taking the lead on investigations from 2008.

The conference will cover:

- A step-by-step guide to the local filter process, including new reporting requirements;
- Managing referrals, investigations, hearings and sanctions;
- Joint working;
- Mediation

The Committee is asked to note the Conference dates and delegate up to two members to attend the Conference on behalf of the authority.

DECISION IN THE CASE OF MAYOR LIVINGSTONE VS. ADJUDICATION PANEL FOR ENGLAND

40 – 44

The decision of the High Court in the case of Livingstone vs. the Adjudication Panel for England is attached for members' information. The judgement has important implications in relation to the operation of the Code of Conduct, which the revised Code seeks to address.

STANDARDS COMMITTEE WORK PROGRAMME

45 – 46

The Committee is asked to note & update its proposed work programme.

ANY OTHER BUSINESS

STANDARDS COMMITTEE

—Minutes—

07 NOVEMBER 2006

Members Present:

Mr.Christopher Troke (Chairman)
Councillor Nicholas Botterill
Councillor Donald Johnson
Councillor Lisa Homan

Officers in attendance:

Ross Chesterton, Corporate Fraud Manager
Lesley Courcouf, ACE (OD) & Monitoring Officer
Michael Cogher, Head of Legal Services
John Cheong, Committee Team Manager

ITEM		ACTION
Item 1	<u>MINUTES OF THE MEETING OF THE STANDARDS COMMITTEE HELD ON 18 JULY 2006</u>	
	<u>RESOLVED</u> - That the minutes of the meeting held on 18 July 2006 be agreed and signed as an accurate record.	ACE/JPC to note
Item 2	<u>APOLOGIES FOR ABSENCE</u>	
	Apologies for absence were received from Grace Moody-Stuart and Steven Moussavi.	ACE/JPC to note
Item 3	<u>DECLARATIONS OF INTEREST</u>	
	There were no declarations of interest made by members of the Committee at this meeting.	
Item 4	<u>COUNCIL'S WHISTLE-BLOWING PROCEDURE – UPDATE</u>	
	With Members' agreement, the Chairman varied the order of business to take this item of business first .	
	The report was introduced by Lesley Courcouf, Assistant Chief Executive & Monitoring Officer, and Ross Chesterton, Corporate Fraud Manager.	

The appendix to the report outlined the Council's confidential reporting ("whistle-blowing") code, which had been promulgated to all Councillors, senior officers and staff in the organisation.

It was reported that since the last report to the Committee, there had only been two cases referred to the corporate unit for investigation – one case in HFHMS and the other, which was confidential at present, still on-going.

Members queried the reason for the very low referral rate. In response, they were advised by the Corporate Fraud Manager that the reasons were varied and complex - many lower profile cases were being dealt with locally; the pejorative nature of the term "whistle-blowing"; and the need to change the culture of the organisation to become pro-active and more aware of the seriousness of the issue. To achieve this end, the Corporate Fraud Unit was about to launch a new training initiative in the council which would address these all these issues using "live" examples where seemingly innocuous cases had led to the major uncovering of fraud.

Members queried the problems of convincing staff to report fraud in the first instance. Staff sometimes only felt confident enough to report fraud when they had already left the organisation, or only if they could have a guarantee of complete anonymity, especially if the matter went to trial. Ross Chesterton advised, that in such instances, it was possible for permission for a special hearing session to be sought.

It was agreed that changing the culture of the organisation to report fraud, however minor, was key. The Audit Commission had also begun to place greater emphasis on this aspect of a Council's governance procedures through the "Use of Resources" part of the CPA, so it was important that a culture-change occurred.

Ross Chesterton concluded the discussion by advising members that the service his unit provided was completely confidential, and informants were able to choose to meet off-site and even out of Borough if that made them feel more comfortable. Also all allegations, however trivial, were useful intelligence and could bear fruit if not immediately, then maybe in the future.

RESOLVED: That the report be noted.

- Standards Committee -

The Committee received an oral report and feedback from the Chairman (Mr.Troke) of the 5th Annual Standards Committees' Conference which had taken place in Birmingham on 16 & 17 October, and which he had attended on behalf of the authority.

The main thrust of the Conference had focussed on the new local investigation regime and the implementation of a local filter for future allegations of breach of the Code.

Mr.Troke informed the Committee that he had been in contact with the Standards Board, who had advised that DCLG would shortly be commencing a consultation on a revised Code of Conduct. It was hoped the revised Code, together with guidance from the Standards Board on thresholds to filter out trivial complaints, would be in place from May 2007, so it could be adopted at Council's Annual Meetings. Separate legislation for the devolution of powers to Local Authorities would be brought in during the summer of 2007, with the local filter fully operational by 2008. There would of course be resource implications for Monitoring Officers caused by the bringing in of the local filter, but no promises of additional funding for authorities to cover this aspect was given or made by DCLG.

It was anticipated the new Code would cover such aspects as:

- The re-definition of "personal interests"
- A new category of interest called "public service interest"
- Disclosure of confidential information in the public interest
- Bringing the council / office into disrepute
- Bullying
- Abolition of the duty to report breaches of the Code by other members

The Committee noted the Conference workshop paper on holding effective hearings, and also that the use of mediation was also being promoted by the Standards Board as another method of dealing with "local issue" cases rather than formal hearings.

As a new member to the Committee, Cllr.Homan requested sight of the SBfE training video sent to all Monitoring Officers, which was agreed.

ACE/LC to note and action

Mr.Troke asked, in his role as Chairman of the Committee, whether brief (5 minute) meetings could be arranged with the Leader of the Council, Leader of the Opposition, Chief Executive and Chief Internal Auditor so that he could introduce himself to them and also raise the profile of the Committee, especially in anticipation of the local filter arrangements coming into being.

ACE/LC & JPC to note and

This was unanimously agreed.

arrange

In conclusion, Members commented that officers gave strong advice to members which helped them avoid many of the more common pitfalls, and that in both Party Groups, there was good group discipline. The lack of internal discipline in other authorities had caused significant problems, with many referrals being made to the Standards Board, but this was not an issue at LBHF.

RESOLVED:

That the report be noted.

Item 6 **WORK PROGRAMME**

Members noted the Committee's future work programme and asked that the Chairman's meeting with the Leader, Opposition Leader, Chief Executive etc be added to the January meeting date.

**ACE/JPC to note
& action**

Michael Cogher, Head of Legal, also asked that the DCLG consultation on the revised Code, and new Code training, also be added to the January date, which was agreed. (It was also agreed that if DCLG published the consultation exercise before the next meeting of the Committee, the details would be circulated to all members via email for comment)

**ACE/JPC to note
& action**

RESOLVED: Accordingly.

Item 8 **ANY OTHER BUSINESS**

None.

Meeting began : 7:00 pm

Meeting ended : 8:01 pm

CHAIR.....



STANDARDS COMMITTEE

4

26 MARCH 2007

CONTRIBUTORS

DCLG CONSULTATION PAPER ON A REVISED CODE OF CONDUCT FOR MEMBERS

WARDS

ACE/H.Cttees

Synopsis

ALL

HLS

This report gives the background to the Government's latest proposals to revise the Members' Code of Conduct and reform the Standards Board for England.

The Government's Consultation paper was circulated in advance to all members for information and comment, as the closing date for the Consultation exercise was 9 March 2007.

Attached at **Appendix 1** is the Council's response to the consultation, incorporating councillors and independent members' comments, and a copy of the Government's original consultation paper, which incorporates a copy of the new proposed Model Code of Conduct (**Appendix 2**).

The Government anticipates issuing the new Model Code of Conduct in time for adoption by Local Councils at their Annual Meetings in May.

RECOMMENDATION:

That the report be noted.

BACKGROUND

1. The Government published its White Paper “*Strong and Prosperous Communities*” on 26 October 2006. A key chapter in that White Paper related to “effective, accountable and responsive local government”. The Government’s stated intention was to reform the regime for the conduct of local authority members, with a clearer and simpler Code of Conduct for members, and a more streamlined, more strategic Standards Board for England. This stated intention followed the Government’s earlier discussion paper, ‘*Standards of Conduct in English Government: The Future*’ (December 2005) which included the government’s response to recommendations made by the Standards Board on proposed amendments to the Model Code, and on which members of this Committee have already commented.
2. The Government’s proposals for the future means that in practice the role of the Standards Board for England will be much reduced. It will continue to issue guidance to Local Authorities and formulate policy and oversee matters nationally, but in future will only investigate the most serious allegations of misconduct by members. The Government intends a much greater investigation / determination role for the Monitoring Officer and Standards Committee of the Council. Broadly speaking, whereas at present the initial investigation of allegations of misconduct is undertaken by an Ethical Standards Officer (ESO), under the new regime, it will be the Monitoring Officer (either personally or via a colleague or third party) who will be required to investigate allegations, and then present a report on his or her findings to the Standards Committee for investigation, adjudication and decision.
3. On 22 January 2007, the Department of Communities and Local Government (DCLG) issued their consultation paper on amendments to the Model Code of Conduct. The consultation document and the Government’s new proposed Model Code is attached as **Appendix 2**. The closing date for response to the Government’s consultation was 9 March 2007. The consultation paper was circulated in advance of this meeting to enable members to input comment into the Council’s corporate response. That response is attached as **Appendix 1** to this report.
4. The Government intends that the new Code of Conduct will be issued in time for local councils to adopt the provisions at their Annual Council Meetings in May. Although it would be possible for the Council to impose more stringent provisions, this approach is not recommended. The Council can however supplement the provisions of the Code, and will also be approving its own Local Protocols which will sit side by side with the Code

8 March, 2007

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When telephoning please ask for:
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Dear Mr Tandoh

**RE: CONSULTATION ON AMENDMENTS TO THE MODEL CODE OF CONDUCT
FOR LOCAL AUTHORITY MEMBERS**

I write on behalf of the London Borough of Hammersmith & Fulham in response to your consultation on the above.

The Council broadly supports the proposed amendments to the code and in particular those in relation to interests. The proposed introduction of a common interest principle and the creation of a public service interest will correct a significant omission from original code.

In terms of the specific questions our views are as follows:-

Question 1

Yes.

Question 2

Yes.

Question 3

This authority is currently subject to the Publicity Code which provides useful guidance in relation to publicity. However the Publicity Code predates executive arrangements and should be updated to reflect this. The proposed connection between the codes is a useful addition.

Question 4

Yes. Consideration could be given to allowing authorities to increase the threshold where it is reasonable to do so.

Question 5

We consider that whilst the proposed text is an improvement it does not deal with the issue of political association. For example would the fact that two members have served on a cabinet or committee together for many years be considered to be “close personal association” of it? It may be that this is proposed to be dealt with by guidance.

Question 6

Yes.

Question 7

Yes. The Council particularly welcomes the introduction of the public interest exemption and the relaxation of the rules in relation to the making of representations following the decision in R. (Richardson & Others) v North Yorkshire County Council & Others [2004] LGR 351.

Question 8

We would prefer “he or she” or “him or her”

We hope that this is helpful.

Yours sincerely

Michael Cogher
Head of Legal Services



*Consultation on Amendments
to the Model Code of Conduct
for Local Authority Members*

*Consultation on Amendments
to the Model Code of Conduct
for Local Authority Members*

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Printed in the UK on paper comprising no less than 75% post-consumer waste.

January 2007

Product Code 06 LG 04359

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Introduction

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, which would include changes to the rules on personal and prejudicial interests.

This announcement followed the Discussion Paper *Conduct in English Local Government: The Future*, issued by the then Office of the Deputy Prime Minister in December 2005, which set out the Government's response to the recommendations made by the Standards Board for England for amendments to the model code of conduct for local authority members. These recommendations followed extensive consultation by the Board in 2005 on amending the code, which attracted over 1,200 responses. We are grateful to the Board for the effort it put into its review and the detailed recommendations it formulated which have served as the basis of the current consultation.

Our Discussion Paper indicated that we welcomed the recommendations the Board presented. We agreed with the Board that amendments should be made to the code along the lines it proposed, including making the code clearer and more proportionate, but maintaining a rigorous approach to the identification of serious misconduct.

The decision to amend the code so as to make it more effective and proportionate formed part of the Government's wider review of the conduct regime applying to local authorities, which concluded that the regime should be amended along the lines suggested by the Committee on Standards in Public Life, ie that there should be a move to a more locally-based decision-making regime for the investigation and determination of all but the most serious of misconduct allegations, but with the Standards Board at the centre of the revised regime with a new strategic, regulatory role to ensure consistency of standards.

In advance of this current consultation, we consulted a number of key stakeholders informally on the detail of the proposals, as part of the Department's White Paper implementation plan. Our intention has been to inaugurate a new, more transparent and collaborative way of working with local government and other stakeholders. We are very grateful for the comments received from the LGA, ACSeS, SOLACE and ALACE, among others, which have assisted us in the shaping of these proposals.

This paper represents the Government's consultation on the detailed amendments needed to put our undertaking to amend the code of conduct into effect. There are four current model codes of conduct applying to various categories of local authority members. These were issued in 2001 and are as follows:

- The Local Authorities (Model Code of Conduct)(England) Order 2001
- The Parish Councils (Model Code of Conduct) Order 2001

- The National Park and Broads Authorities (Model Code of Conduct)(England) Order 2001
- The Police Authorities (Model Code of Conduct) Order 2001.

We propose to combine the current four individual codes referred to above into one consolidated code. A revised draft model code to put this into effect is enclosed at Annex A to this consultation paper. In consequence of providing a consolidated code, we have disappplied certain provisions in respect of particular types of authorities. The consultation paper provides an explanatory commentary on the proposed amendments set out in the revised draft code, and invites the views of consultees on the detailed proposals. We would welcome comments on the proposed model code, including in relation to the questions we have specifically identified in the paper. These are also listed separately at Annex B.

Please send any comments you may have on the paper to

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by 9 March 2007

Your responses may be made public by the Department for Communities and Local Government. If you do not want all or part of your response or name made public, please state this clearly in the response. Any confidentiality disclaimer that may be generated by your organisation's IT system or included as a general statement in your FAX cover sheet will be taken to apply only to information in your response for which confidentiality has been specifically requested.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure 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). If you want other information that you provide to be treated as confidential, please 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. 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.

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.

If you have comments or complaints about the way this consultation has been conducted, these should be sent to:

Albert Joyce, Communities and Local Government Consultation Co-ordinator,
Zone 6/H10, Eland House, Bressenden Place, London SW1E 5DU; or by e-mail to:
albert.joyce@communities.gsi.gov.uk.

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Commentary on Detailed Amendments Proposed

(THE BRACKETED REFERENCES TO PARAGRAPH NUMBERS CORRESPOND TO THE RELEVANT PARAGRAPHS OF THE DRAFT MODEL CODE)

Unlawful discrimination

1. To delete reference to unlawful discrimination (paragraph 2(2)(a))

Paragraph 2(a) of the model code currently provides that a member must promote equality by not discriminating unlawfully against any person. However, an Adjudication Panel finding in January 2005 concluded that the Panel has no jurisdiction to make findings of unlawful discrimination. We need therefore to ensure that unlawful discrimination is not an issue on which a Panel may be required to make a determination, so the provisions in current paragraph 2(a) will be deleted.

We propose to replace paragraph 2(a) with a provision proscribing members from doing anything that would seriously prejudice their authority's statutory duties in regard to equality. We are also retaining the provision in the current rules requiring members to treat others with respect. These provisions should allow the code to continue to support the principles of fair treatment and respect for others, including behaviour and actions which could relate to equality issues.

Bullying

2. Add a provision specifically proscribing bullying (paragraph 2(2)(b))

Currently, paragraph 2(b) of the model code states that a member must treat others with respect. Paragraph 4 of the current code provides that a member must not bring his or her office or authority into disrepute. The code makes no specific reference, however, to bullying behaviour.

We propose to add a specific provision to indicate that members must not bully any person, ie that bullying of other members, officers or anyone else is a breach of the code of conduct. We wish to ensure that it is clear that bullying behaviour should play no part in members' conduct.

We have accepted the Standards Board's view that a specific definition of bullying does not need to be included in the code, and that this should be left to guidance by the Board, which will indicate, for example, the view we take that bullying can relate not only to patterns of behaviour, but also to individual incidents.

Disclosure of confidential information

3. To allow members to disclose confidential information where such disclosure is in the public interest (paragraph 3(a)(iii))

Paragraph 3(a) of the code currently provides that a member should not disclose information given to him or her in confidence or which the member believes to be of a confidential nature. There is no explicit provision allowing members to disclose information if this is in the public interest.

An Adjudication Panel decision in 2005 confirmed, as a matter of law, that paragraph 3(a) of the code of conduct fails properly to take into account Article 10(1) of the European Convention on Human Rights. The Panel found that in order to be compatible with Article 10(1), the code should be read so as to allow for the disclosure of information of a confidential nature where it is in the public interest to do so.

We therefore wish to provide that a member may make a disclosure of information given to him or her in confidence or which he or she believes to be of a confidential nature in the public interest provided the disclosure is in good faith and reasonable, and that the member has not breached any reasonable requirements of the authority, eg in the form of relevant local protocols or procedures. We propose that the Standards Board would issue guidance on how they would expect members to interpret this. We expect that such guidance would indicate that members should be able to disclose information in the following circumstances: where they reasonably believe that the disclosure will indicate evidence of a criminal offence, where the authority is failing to comply with its legal obligations, that a miscarriage of justice has occurred or may occur, that the health and safety of anyone has been endangered, or that the environment has been damaged.

We appreciate that it is important that the public interest test does not allow members to use the defence of public interest when merely seeking to make political capital through disclosure of properly confidential information. Our aim is to strike a sensible balance which is workable in practice between the need to treat certain information confidentially and to allow the disclosure of information in appropriate circumstances.

There may be scope for the provision on confidential information to be clarified further, so as to make clear that the rules on the disclosure of information cover information received by a member in his official capacity or which relates to the work of the council. This would ensure that a member would not be able to claim that although he did disclose information, he did not receive the information in his capacity as a member, which the current drafting might potentially allow him to claim.

Q1. Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?

Behaviour outside official duties

4. Paragraphs 4 and 5

Paragraph 4 of the current code provides that a member must not in his or her official capacity or any other circumstance conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute. In addition, paragraph 5 currently provides that a member must not in his or her official capacity or any other circumstance use his or her position as a member improperly to secure for himself or herself or any other person an advantage or disadvantage.

The Standards Board has recommended amending the code so that, in terms of a member's behaviour in private life, conduct which amounts to a criminal offence, as well as behaviour which would be regarded as criminal but for which a conviction has not been secured, could be regarded as bringing the member's office or authority into disrepute under the terms of the code.

Separately the decision by the High Court in the case of the appeal of the Mayor of London, in October 2006, cast some doubt on the ability of the code of conduct to proscribe behaviour of members in their private capacity. The judgement commented on the interpretation of section 52 of the Local Government Act 2000. This section imposes a duty on a council member to give an undertaking to observe the code of conduct 'in performing his functions'. The Court considered that section 52 limits the scope of the code so that conduct in a member's private capacity can only come within the scope of the code where it is established that there is a direct link with the member's office, eg if the member uses his office for personal gain.

The Court judgement gave examples of cases where it did not think that the code was able to apply. These included where a member shoplifts or is guilty of drunken driving. Such action will not now be caught by the code if the offending conduct had nothing specifically to do with the member's position as a councillor.

This is a narrower interpretation than we have previously applied to the code. Up to now we have assumed it was possible to take a wider view of what private conduct could be relevant, ie including actions not necessarily to do with the member's position as a councillor but which may affect the member's reputation and electors' confidence in him or her.

In response to this case, we have decided to amend sections 49 to 52 of the Local Government Act 2000 so that behaviour in a private capacity might be included within the remit of a code of conduct. This amendment is included in the Local Government and Public Involvement in Health Bill currently before Parliament.

If the amendments are enacted, Ministers are currently minded to provide that only private behaviour for which the member has been convicted by a court should be proscribed by the code of conduct, as referred to in paragraph 4(2), and not behaviour falling short of a criminal offence.

Q2. Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in members' private capacity to those activities which have already been found to be unlawful by the courts, appropriate?

Commission of criminal offence before taking office

5. Paragraph 4(2)

We agree with the Standards Board that in the circumstances where a member's behaviour has been found to be unlawful by a court, then the member may be perceived to have brought his or her office or authority into disrepute. We also consider that where a member committed the offence before taking office as a member but where he or she was not convicted until after becoming a member, then this offence should be capable of being taken into account when considering whether the member has brought his or her authority into disrepute. A new paragraph 4(2) implements this amendment.

Using or seeking to use improper influence

6. To amend paragraph 5(a) by adding 'or attempt to use'

Paragraph 5(a) currently provides that a member must not in his or her official capacity or any other circumstance use his or her position as a member improperly to confer on or secure for himself or herself or any other person an advantage or disadvantage. A literal interpretation of this provision might mean that it does not cover unsuccessful attempts by the member to use his or her position in this way. We believe that justice would be better served if provision was made for the code to proscribe members' attempts to use their position even where such attempts were not in the event successful. To this end, we have proposed that the paragraph should provide that the member should not either use or attempt to use his or her position to confer an advantage or disadvantage for himself or herself or anyone else.

7. Paragraph 5(b)(ii)

We have sought to simplify this sub-paragraph without losing any of the intended meaning of the original provision, and specific reference is added to clarify the intention that an authority's resources should not be used improperly for party political purposes.

Publicity code

8. To add reference at paragraph 5 to the need for the member to have regard to the guidance set out in the Government's local authority publicity code

We believe it would be a sensible complement to the code to make it clear that, in addition to providing in paragraph 5 that members should not use resources improperly for political purposes, they should also have regard to the Government's Code of Recommended Practice on Local Authority Publicity.

The Code of Recommended Practice on Local Authority Publicity (a copy of which can be found at <http://www.communities.gov.uk/index.asp?id=1133867>) is issued by the Government under the Local Government Act 1986 and was last amended in 2001. The Publicity Code provides instructions about the content, style and distribution of promotional activity and material produced by authorities, supplementing the basic requirement in the 1986 Act that authorities must not use their resources for political purposes.

It has been suggested by some that the Code of Practice on Local Authority Publicity is unnecessary and restrictive. We would be grateful to hear the views of consultees on the Publicity Code and whether or not they feel it is serving a useful purpose. If people feel it should be abolished, do they think it should be replaced by any other guidance, eg issued by local authority representative bodies?

The Publicity Code does not currently apply to the Greater London Authority, fire and rescue authorities and the national parks authorities, although the code of conduct does apply to these bodies. We would also be grateful therefore for views on whether and how it might be appropriate for the Publicity Code to apply in relation to the above bodies.

Q3. Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, eg via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?

Reporting breaches of the code and proscribing intimidation

9. To delete the duty in paragraph 7 of the existing code to report breaches of the code by other members, and add a proscription (at paragraph 2(2)(c)) on the intimidation of complainants and witnesses

Paragraph 7 of the current code provides that a member must, if he or she becomes aware of another member's breach of the code, make an allegation to the Standards Board of that breach.

We wish to delete the requirement to report other members' breaches of the code, which has been perceived by some as encouraging councillors to make trivial allegations.

At the same time, to protect members who do report serious misconduct from victimisation, we propose to add a provision at paragraph 2(2)(c) prohibiting a member from intimidating or attempting to intimidate a complainant or witness, people carrying out the investigation, support staff and others involved in the case, whether or not they are members, officers or members of the public. This would demonstrate to members that victimising complainants or witnesses will rebound on them by making the case against them more serious, since such intimidation would itself count as a breach of the code.

In addition, since it is the Government's policy to increase the proportion of cases to be investigated locally, it is important that officers who are required to handle such cases are free from inappropriate pressures from members.

Gifts and hospitality

10. Paragraphs 7(a)(vi) and 8(3)

Paragraph 17 of the code currently provides that in the case of the receipt of any gift or hospitality over the value of £25, members must notify the monitoring officer of the existence and nature of the gift or hospitality. There is no provision for such information to be made public in the register of members' interests.

We wish to reinforce the principles of accountability and openness of the conduct regime by requiring that information about gifts and hospitality should be included in the register of interests. We propose therefore to provide that the receipt of gifts or hospitality of over £25 in value should be an interest that should be registered as a personal interest. However, to ensure this provision is proportionate, we also propose that the requirement to disclose the personal interest to a meeting would cease after five years following the receipt of the gift or hospitality, although that receipt would remain on the register as a personal interest.

Q4. Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?

Body influencing public opinion or policy

11. Paragraph 7(b)(iv)

To clarify the fact that the existing reference to a body whose purposes include the influence of public opinion or policy in which the member may have a personal interest, includes any political party.

Interests of family, friends and those with a close personal association

12. To amend reference in the current code to friends and family by adding reference to any person with whom the member has a close personal association (paragraph 7(c)(i) and elsewhere)

Paragraph 8 of the current code provides that a member must regard himself or herself as having a personal interest in a matter if a decision on it affects to a greater extent than other council tax payers, ratepayers or inhabitants of the authority's area, the well-being or financial position of himself, a relative or a friend. We wish to ensure that the definition of personal interest includes matters affecting a range of personal, business and professional associates, as well as people who would specifically be termed as 'friends'. Reference has therefore been added to any person with whom the member has a close personal association.

13. Definition of family and friends (paragraph 7(c)(i) and elsewhere)

With the inclusion of "close personal association" it is not thought necessary to keep the definitions of 'family' or 'friend' in the code. Guidance by the Standards Board will give assistance to members on these definitions.

Q5. Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?

Definition of personal interests

14. To replace reference in paragraph 8 to the inhabitants of an authority's area with provision that members should not be required to register an interest in a matter unless the interest is greater than that of the majority of the inhabitants of the ward affected by the matter. For parish councils the definition would apply in respect of the council's whole area (paragraph 7(c)).

Paragraph 8 of the current code provides that members have a personal interest if they would be affected by a matter to a greater extent than other council tax payers, rate payers or inhabitants of the authority's area.

We wish the code to allow members to be able more frequently to take part in council meetings which their communities expect them to participate in or on issues, in some cases, which they have even been elected specifically to address. We therefore wish to delete the current requirement that a personal interest arises where a decision on it might be regarded as affecting the member to a greater extent than other inhabitants of the authority's area, and replace it with a requirement that the personal interest arises only where the interest might reasonably be regarded as affecting the member to a greater extent than the majority of other council tax payers, ratepayers or inhabitants of the ward which is affected by the particular matter. The purpose is to reduce the

number of times a personal interest may arise on matters which are not of genuine concern to the public, as a result of the broad current test relating to the whole council's area, which in effect has meant in some cases that members have felt they have to declare interests which are in fact shared with a large number of people.

Narrowing the definition will provide a more locally-based focus, and reduce the number of personal interests which arise by requiring that an interest would arise only where the interest would be higher than most people in the local area affected by the matter. This should mean that an interest would not arise where interests are shared by a substantial number of inhabitants in the authority's area.

Where members, eg elected mayors and co-opted members, do not represent wards, the relevant test would be whether the issue affected the member more than the majority of people in the ward affected by the particular matter.

In the case of parish councils, which do not usually have wards, their areas are so small that we propose to apply the definition in respect of the council's whole area.

Disclosure of personal interests

15. Paragraph 8(4)

Under the current code, a member would technically be in breach of the code's provisions in respect of the personal interests of a relative even if he or she was unaware of any interest held by a relative. It would be sensible and more proportionate to amend the provision so that the rules on the disclosure of interests at a meeting in respect of a family member, friend or a person with a close personal association will only apply if the member is aware or ought reasonably to be aware of the interest held by that person.

Public service interests

16. To create a new category of 'public service interest', which arises where a member is also a member of another public body, and for the public service interest only to be declared at meetings where the member speaks on the relevant issue (paragraph 8(2) and 8(7))

Paragraph 9 of the current code provides that a member with a personal interest must disclose the interest at the commencement of the meeting or when the interest becomes apparent.

We wish to provide a definition of what is meant by 'public service interest', ie an interest which arises where a member is also a member of another public body, to which they have been appointed or nominated by the authority, or of which they are a member in their own right. Members would be required, as now, to enter any such interest they have in the register of interests.

However, instead of, as now, requiring that public service interests are declared at the start of any relevant business, we wish to require that such interests should only be declared at such time as the member speaks on a relevant issue. The aim of this is to avoid the current onerous requirement by which lengthy periods at the start of business on a particular issue can be spent by members in declaring their personal interests in the particular issue, even if many or all of those members have no intention to take part in the debate on that subject.

Prejudicial interests – List of exemptions

17. To simplify and amend the list of exemptions where members should not regard themselves as having a prejudicial interest (paragraph 9(2)(b))

Three new items have been added to the list of interests which are not to be regarded as prejudicial. This will mean that a member will not have a prejudicial interest where the matter relates to the authority's functions in respect of:

- Indemnities. This addition arises from the Standards Board's experience of cases where, for example, members have felt unable to vote in discussions on the issue by the authority of indemnities which might relate to themselves, as well as a number of other members of the council.
- The setting of council tax. We understand that some members have been concerned that in discussing this issue, prejudicial interests may arise for them because of their connection with an organisation funded from an operational budget which is being set by the council tax settlement. We consider that such an interest is likely to be too remote to be a prejudicial interest.
- Considering whether or not the member should become a freeman of the authority.

We also propose to amend the Local Authorities (Code of Conduct) (Local Determination) Regulations to allow a member to attend a hearing of a standards committee into his or her conduct in order to be able to defend himself or herself.

Q6. Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?

Overview and scrutiny committees

18. To provide that members are excluded from overview and scrutiny committees where they are scrutinising decisions, including decisions made by the authority's executive, which they were involved in making (paragraph 10)

Paragraph 11 of the current code does not allow a member to scrutinise a decision of a committee, sub-committee or joint committee 'of which he may also be a member'. It does not cover the position of a member who may not now be a member of the relevant committee but was a member at the time the decision was taken. We therefore wish to make an amendment to ensure that the proscription will apply where the councillor was a member at the time of the decision or action.

A further consequence of the current paragraph 11 provision is that a member is not allowed to scrutinise decisions where he or she is a member of the committee whose decision is being scrutinised, ie the proscription applies where he or she was not involved in making the decision, for example, because he or she was absent from the committee or where he or she became a member after the decision was taken. This can have the effect of debarring members from the scrutiny function in respect of decisions in which they had no involvement. We therefore propose an amendment to provide that members should only be debarred from involvement in the scrutiny function in cases where they are scrutinising decisions they were involved in making.

In addition, the rules do not currently refer to decisions made or action taken by the authority's executive. They therefore do not cover the case where a former member of the executive sits on a scrutiny committee to scrutinise decisions of the executive to which he or she contributed. We propose therefore that paragraph 10 is amended to indicate that the restriction will apply to former executive members who were involved in making the relevant decisions.

Participation in relation to prejudicial interests

19. To provide a clearer prejudicial interest test to apply for public service interests and where members attend to make representations (paragraphs 9 and 11)

Actions which a member should take where he or she has a prejudicial interest are set out in current paragraph 12.

We wish to provide for clearer and more proportionate rules to apply in respect of participation in council meetings for those who have public sector interests, ie who are members of another authority or a charity or lobbying body, and for those who are attending meetings to make representations.

We consider that the fact that an issue considered by one body may affect another body with which the member is involved does not necessarily mean that the member's judgement of the public interest will be prejudiced. In such cases, the public service interest should only be considered prejudicial where

- (a) the matter relates to the financial affairs of the body concerned, or
- (b) where the matter relates to the determining of any approval, consent, licence or permission (eg in respect of planning and licensing) in relation to the body.

Where a member has a public service interest and (a) or (b) do not apply, then no prejudicial interest would arise and the member may speak and vote at the meeting.

Any member (including a member with a public service interest to which (a) or (b) also apply), will not have a prejudicial interest where they attend a meeting to make representations, answer questions or give evidence, provided the committee agrees that the member may do so. After members have answered such questions or given such evidence, they must then withdraw from the room where the meeting is being held.

All members with a prejudicial interest, regardless of the category of interest, would still continue to be subject to paragraph 11(1)(c), ie the requirement that members should not seek improperly to influence a decision about the matter.

Q7. Is the proposed text, relaxing the rules to allow increased representation at meetings, including where members attend to make representations, answer questions or give evidence, appropriate?

Sensitive Information

20. To provide for sensitive information in respect of private interests not to be included on the register of interests where revealing it is likely to lead to the member or those he or she lives with being subject to violence or intimidation (paragraphs 8(5) and 13)

Paragraph 14 of the current code requires members to register all of their personal interests.

We wish to ensure that sensitive information, for example, where members are employed in areas of sensitive employment, such as certain types of scientific research, need not be made public if to do so would threaten the safety of the member and/or his family. A member who considers that the information which he or she would need to register is sensitive, will apply to the authority's monitoring officer for the interest not to be registered. If the monitoring officer is satisfied that the information is sensitive and the risk of intimidation of the member or those he or she lives with is real, the member may not include the sensitive information on the register of interests.

Consistent with the above, we also wish to amend paragraph 8(5), so that a member with an accepted sensitive interest should not have to disclose publicly the details of that sensitive information at a council meeting, although he or she will still need to disclose that they have a personal interest if this is the case in respect of a particular matter under discussion.

National Park and Boards Authorities – prejudicial interest

21. Delete sub-paragraphs (f) and (g) from paragraph 10(2) of the current National Park and Broads Authorities (Model Code of Conduct)(England) Order 2001

Paragraph 10(2)(f) and (g) of the current model code applying to the National Park and Broads Authorities makes provision in respect of matters for which a member may regard himself as not having a prejudicial interest. At the request of DEFRA, and following earlier consultation by them with the National Parks and Broads Authorities, we wish to delete provisions allowing interest in respect of matters relating to farming, land, certain charges or navigation not to be regarded as prejudicial interests for members in certain cases. This is to address criticism that these clauses have led to preferential treatment for some landowners and navigators, who, if it was not for the operation of the paragraph, would have been regarded as having a prejudicial interest.

Register of members' interests

22. Paragraphs 12 and 13

Opportunity has been taken to rearrange the position of various provisions within the code. Because the list of potential personal interests is now in paragraph 7, the paragraphs on the registration of personal interests have been simplified and shortened.

Gender neutrality of language

23. To amend the code throughout to ensure gender neutrality of language

To signal the fact that the principles of the code refer both to women as well as men, and promote a more inclusive approach, we propose to make the language of the code gender neutral and replace gender-specific language such as 'he', or 'him', with 'he or she', or 'him or her'.

Q8. Is there a better, more user-friendly way of ensuring the text is gender neutral, for example, would consultees consider that amending the wording to say 'you' instead of 'he or she' or 'him or her' would result in a clearer and more accessible code for members?

Annex A

STATUTORY INSTRUMENTS

[2007] No. [xxx]

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Authorities (Model Code of Conduct) Order [2007]

<i>Made</i>	- - - -	.xxx
<i>Laid before Parliament</i>		.xxx
<i>Coming into force</i>	- -	.xxx

The Secretary of State for Communities and Local Government makes the following Order in exercise of the powers conferred by sections 50(1) and (4), 81(2) and (3), and 105(2), (3) and (4) of the Local Government Act 2000(a).

The Secretary of State has consulted in accordance with section 50(5) of that Act.

The Secretary of State is satisfied that this Order is consistent with the principles for the time being specified in an order under section 49 of that Act.

Citation, commencement, application and interpretation

1.—(1) This Order may be cited as the Local Authorities (Model Code of Conduct) Order [2007] and comes into force on [xxx].

(2) This Order applies—

- (a) in relation to police authorities in England and Wales; and
- (b) in relation to the following authorities in England—
 - (i) a county council;
 - (ii) a district council;
 - (iii) a London borough council;
 - (iv) a parish council;
 - (v) the Greater London Authority;
 - (vi) the Metropolitan Police Authority;
 - (vii) the London Fire and Emergency Planning Authority;
 - (viii) the Common Council of the City of London;
 - (ix) the Council of the Isles of Scilly;
 - (x) a fire and rescue authority;
 - (xi) a joint authority;
 - (xii) the Broads Authority; and

(a) 2000 c.22.

(xiii) a National Park authority,
and references to “authority” are construed accordingly.

Model Code of Conduct

2.—(1) The Secretary of State here issues a model code as regards the conduct which is expected of members and co-opted members of authorities and that code is set out in the Schedule to this Order.

(2) Subject to paragraphs (3) to (6), all the provisions of the model code in the Schedule to this Order are mandatory.

(3) The following provisions of the model code in the Schedule are not mandatory for authorities which are not operating executive arrangements—

- (a) sub-paragraph (b) in the definition of “meeting”;
- (b) the words “or its executive’s” and “, or area committees” in the definition of “meeting”;
and
- (c) paragraphs 8(6), 8(7)(b), 10, 11(1)(b) and 11(2).

(4) The following provisions of the model code in the Schedule are not mandatory for police authorities, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, a fire and rescue authority and a joint authority—

- (a) sub-paragraph (b) in the definition of “meeting”;
- (b) the words “or its executive’s” and “, or area committees” in the definition of “meeting”;
and
- (c) paragraphs 5(b)(iii), 8(6), 8(7)(b), 9(2)(b)(i), 9(2)(b)(ii), 10, 11(1)(b) and 11(2).

(5) The following provisions are not mandatory for parish councils—

- (a) sub-paragraph (b) in the definition of “meeting”;
- (b) the words “or its executive’s” and “, or area committees” in the definition of “meeting”;
and
- (c) paragraphs 6, 8(6), 8(7)(b), 9(2)(b)(i), 9(2)(b)(ii), 10, 11(1)(b) and 11(2).

(6) The following provisions are not mandatory for a National Parks authority and the Broads Authority—

- (a) sub-paragraph (b) in the definition of “meeting”;
- (b) the words “or its executive’s” and “, or area committees” in the definition of “meeting”;
and
- (c) paragraphs 8(6), 8(7)(b), 9(2)(b)(i), 9(2)(b)(ii), 10, 11(1)(b) and 11(2).

Disapplication

3. Where an authority has adopted a code of conduct or such a code applies to it, the following shall, where applicable to the authority, be disappplied as respects that authority—

- (a) sections 94 to 98 and 105 to the Local Government Act 1972;
- (b) section 30(3A) of the Local Government Act 1974;
- (c) regulations made or code issued under section 19 and 31 of the Local Government and Housing Act 1989;
- (d) paragraphs 9 and 10 of Schedule 7 to the Environment Act 1995;
- (e) in section 17 of the Audit Commission Act 1998, subsections (1)(b), (3), (5)(b), (7) and (8) and in subsection (2), the words “subject to subsection (3)” and paragraphs (a) and (b);
- (f) section 18 of the Audit Commission Act 1998; and
- (g) any guidance issued under section 66 of the Greater London Authority Act 1999.

Revocation and savings

4.—(1) Subject to paragraphs (2) and (3), the following orders are revoked—

- (a) the Local Authorities (Model Code of Conduct) (England) Order 2001(a);
- (b) the Parish Councils (Model Code of Conduct) Order 2001(b);
- (c) the National Park and Broads Authorities (Model Code of Conduct) (England) Order 2001(c);
- (d) the Police Authorities (Model Code of Conduct) Order 2001(d).

(2) The Orders referred to in paragraph (1) continue to have effect for the purposes of and for purposes connected with —

- (a) the investigation of any written allegation under Part 3 of the Local Government Act 2000, where that allegation was made before the date when, pursuant to section 51 of that Act—
 - (i) the authority adopts a code of conduct incorporating the mandatory provisions of the model code of conduct in the Schedule to this Order in place of their existing code of conduct;
 - (ii) the authority revises their existing code of conduct to incorporate the mandatory provisions of the model code of conduct in the Schedule to this Order; or
 - (iii) the mandatory provisions of the model code of conduct in the Schedule to this Order apply to members or co-opted members of the authority under section 51(5)(b) of that Act;
- (b) the adjudication of a matter raised in such an allegation; and
- (c) an appeal against the decision of an interim case tribunal or case tribunal in relation to such an allegation.

Signed on behalf of the Secretary of State for Communities and Local Government

[Date]

Name
[Minister for.....]
Department for Communities and Local Government

(a) S.I. 2001/3575.
(b) S.I. 2001/3576.
(c) S.I. 2001/3577.
(d) S.I. 2001/3578.

SCHEDULE

THE MODEL CODE OF CONDUCT

PART 1

General Provisions

Interpretation

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;

“the authority’s monitoring officer”, in relation to parish councils, is construed as referring to the monitoring officer 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(2) of the Local Government Act 2000; and

“the authority’s standards committee”, in relation to parish councils, is construed as referring to 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(2) of the Local Government Act 2000.

Scope

1.—(1) A member must observe the authority’s code of conduct whenever he or she—

- (a) conducts the business of the authority;
- (b) conducts the business of the office to which he or she is elected or appointed; or
- (c) acts as a representative of the authority,

and references to a member’s official capacity is construed accordingly.

(2) An authority’s code of conduct does not, apart from paragraphs 2(2)(c), 4 and 5(a), have effect in relation to the activities of a member undertaken other than in an official capacity.

(3) Where a member acts as a representative of the authority—

- (a) on another relevant authority, he or she must, when acting for that other authority, comply with that other authority’s code of conduct; or
- (b) on any other body, he or she must, when acting for that other body, comply with the 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

2.—(1) A member must treat others with respect.

(2) A member must not—

- (a) do anything which may seriously prejudice his or her authority's ability to comply with any of its statutory duties under the equality enactments (as defined in section 33 of the Equality Act 2006);
- (b) bully any person;
- (c) in his or her official capacity, or any other circumstance, intimidate or attempt to intimidate any person who is or is likely to be—
 - (i) a complainant,
 - (ii) a witness, or
 - (iii) supporting the administration of any investigation or proceedings, in relation to an allegation that a member has failed to comply with his or her authority's code of conduct;
- (d) do anything which compromises or is likely to compromise the impartiality of those who work for, or on behalf of, the authority.

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

3. A member must not—

- (a) disclose information given to him or her in confidence by anyone, or information acquired which he or she believes is of a confidential nature, except where—
 - (i) he or she has the consent of a person authorised to give it;
 - (ii) he or she is required by law to do so; or
 - (iii) the disclosure is—
 - (aa) reasonable and in the public interest;
 - (bb) made in good faith and does not breach any reasonable requirements of the authority;
- (b) prevent another person from gaining access to information to which that person is entitled by law.

4.—(1) A member must not in his or her official capacity, or any other circumstance, conduct himself or herself in a manner which could reasonably be regarded as bringing his or her office or authority into disrepute.

(2) The conduct referred to in paragraph (1) may include a criminal offence including one committed by the member before taking office but for which he or she is not convicted until after that date.

5. A member—

- (a) must not in his or her official capacity, or any other circumstance, use or attempt to use his or her position as a member improperly to confer on or secure for himself or herself or any other person, an advantage or disadvantage; and
- (b) must, when using or authorising the use by others of the resources of the authority—
 - (i) act in accordance with the authority's requirements;
 - (ii) ensure that such resources are not used improperly for political purposes (including party political purposes); and
 - (iii) have regard to any Local Authority Code of Publicity made under the Local Government Act 1986.

6. A member must when reaching decisions—

- (a) have regard to any relevant advice provided to him or her by—
 - (i) the authority's chief finance officer; and
 - (ii) the authority's monitoring officer; and

- (b) give the reasons for those decisions in accordance with the authority's and any statutory requirements.

PART 2

Interests

Personal interests

7. A member has a personal interest in any matter where—
- (a) it relates to—
 - (i) any employment or business carried on by the member;
 - (ii) any person who employs or has appointed the member;
 - (iii) any person, other than a relevant authority, who has made a payment to the member in respect of his or her election or any expenses incurred by him or her in carrying out his or her duties;
 - (iv) any corporate body which has a place of business or land in the authority's area, and in which the member has a beneficial interest in a class of securities of that body that exceeds the nominal value of £25,000 or one hundredth of the total issued share capital of that body (whichever is the lower);
 - (v) any contract for goods, services or works made between the authority and the member or a firm in which he or she is a partner, a company of which he or she is a remunerated director, or a body of the description specified in paragraph (iv);
 - (vi) any gift or hospitality over the value of £25 received by the member;
 - (vii) any land in the authority's area in which the member has a beneficial interest;
 - (viii) any land where the landlord is the authority and the tenant is the member or a firm in which he or she is a partner, a company of which he or she is a remunerated director, or a body of the description specified in paragraph (iv);
 - (ix) any land in the authority's area in which the member has a licence (alone or jointly with others) to occupy for 28 days or longer;
 - (b) it relates to his or her membership of or position of general control or management in any—
 - (i) body to which the member is appointed or nominated by the authority;
 - (ii) public authority or body exercising functions of a public nature;
 - (iii) company, industrial and provident society, charity, or body directed to charitable purposes;
 - (iv) body whose principal purposes include the influence of public opinion or policy, including any political party; and
 - (v) trade union or professional association; or
 - (c) a decision on the matter might reasonably be regarded as affecting the well-being or financial position of—
 - (i) the member, one of the member's family or a friend, or any person with whom the member has a close personal association; or
 - (ii) any person who employs or has appointed such persons, any firm in which they are a partner, or any company of which they are directors;
 - (iii) any corporate body in which such persons have a beneficial interest in a class of securities exceeding the nominal value of £5,000; or
 - (iv) any body listed in paragraphs (i) to (v) of sub-paragraph (b) in which such persons hold a position of general control or management,to a greater extent than the majority of—

- (aa) 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;
- (bb) in the case of the Greater London Authority, other council tax payers, ratepayers or inhabitants of the Assembly constituency affected by the decision; or
- (cc) in all other cases, other council tax payers, ratepayers or inhabitants of the authority's area.

Disclosure of personal interests

8.—(1) Subject to sub-paragraphs (2) to (7), a member with a personal interest in a matter who attends a meeting of the authority at which the matter is considered 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) A member with a personal interest in a matter which is a public service interest, need only disclose to that meeting the existence and nature of that interest when he or she addresses the meeting on that matter.

(3) A member with a personal interest of the type mentioned in paragraph 7(a)(vi) need not disclose the nature or existence of that interest to the meeting if the interest was registered more than five years before the date of the meeting.

(4) In relation to a personal interest of a family member, a friend, or any person with whom the member has a close personal association, sub-paragraph (1) only applies where the member is aware or ought reasonably to be aware of the interest.

(5) Where, by virtue of paragraph 13, sensitive information relating to a member is not registered in the authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000), a member with a personal interest must indicate to the meeting that he or she has a personal interest, but need not disclose the sensitive information to that meeting.

(6) Subject to paragraph 11(1)(b), a member with a personal interest in any matter who has made an executive decision in relation to that matter must ensure that any written statement of that decision records the existence and nature of that interest.

(7) In this paragraph—

- (a) a member has a public service interest in a matter where that matter relates to—
 - (i) another relevant authority of which he or she is a member;
 - (ii) another public authority in which he or she holds a position of general control or management; or
 - (iii) a body to which he or she is appointed or nominated by the authority; and
- (b) “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 interests

9.—(1) Subject to sub-paragraphs (2) and (3), a member with a personal interest in a matter also has a prejudicial interest in that matter 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 the member's judgement of the public interest.

(2) A member does not have a prejudicial interest in a matter where—

- (a) he or she has a public service interest in the matter, unless—
 - (i) the matter relates to the financial affairs of the body to which that public service interest relates; or

- (ii) the matter relates to the determining of any approval, consent, licence, permission or registration in relation to that body;
- (b) that matter relates to the functions of the authority in respect of—
 - (i) housing, where he or she is a tenant of the authority provided that those functions do not relate particularly to the member's tenancy or lease;
 - (ii) school meals, transport and travelling expenses, where the member is a guardian or parent of a child in full time education, or is 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 the member is in receipt of, or is entitled to the receipt of such pay from a relevant authority;
 - (iv) an allowance or payment made under sections 173 to 176 of the Local Government Act 1972 or section 18 of the Local Government and Housing Act 1989;
 - (v) an indemnity given under an order made under section 101 of the Local Government Act 2000;
 - (vi) considering the bestowing of the title of freeman on the member; and
 - (vii) setting council tax under the Local Government Finance Act 1992.

(3) A member does not have a prejudicial interest in a matter where he or she attends a meeting for the purpose of making representations, answering questions or giving evidence relating to the matter, provided the meeting agrees that the member may do so and after making representations, answering questions or giving evidence, the member withdraws from the room where the meeting is being held.

(4) In this paragraph, a member has a public service interest in a matter where that matter relates to—

- (a) any of the matters referred to in paragraph 8(7)(a); or
- (b) a charity, a lobbying or philanthropic body of which he or she is a member.

Overview and scrutiny committees

10.—(1) For the purposes of this Part, a member has a prejudicial interest where he or she is involved in the consideration of a matter at a meeting of an overview and scrutiny committee of the authority or a sub-committee of such a committee and that consideration relates to a decision made (whether implemented or not), or action taken by—

- (a) the authority's executive;
- (b) another of the authority's—
 - (i) committees or sub-committees; or
 - (ii) joint committees or joint sub-committees,

of which he or she is, or was at the time of the decision or action, a member and he or she was present for the consideration of that matter.

(2) But sub-paragraph (1) does not apply where that member attends the meeting of the overview and scrutiny committee for the purpose of answering questions or otherwise giving evidence relating to that decision or action.

Participation in relation to prejudicial interests

11.—(1) Subject to sub-paragraphs (2) and (3), a member with a prejudicial interest in a matter must—

- (a) withdraw from the room or chamber where a meeting is being held whenever it becomes apparent that the matter is being considered at that meeting, unless he or she has obtained a dispensation from the authority's standards committee;
- (b) not exercise executive functions in relation to that matter; and

- (c) not seek improperly to influence a decision about that matter.
- (2) A member with a prejudicial interest in a matter may, unless that interest is of a financial nature or of the type described in paragraph 10, participate in a meeting of the authority's—
 - (a) overview and scrutiny committees; and
 - (b) joint or area committees,to the extent that such committees are not exercising functions of the authority or its executive.
- (3) In this paragraph, a member has a public service interest in a matter where that matter relates to—
 - (a) any of the matters referred to in paragraph 8(7)(a); or
 - (b) a charity, a lobbying or philanthropic body of which he or she is a member.

PART 3

Registration of Members' Interests

Registration of Members' Interests

12.—(1) A member must, within 28 days of—

- (i) the provisions of an authority's code of conduct being adopted or applied to that authority; or
- (ii) his or her election or appointment to office (where that is later),

register in the authority's register of members' interests (maintained under section 81(1) of the Local Government Act 2000) any personal interest of the type mentioned in paragraph 7(a) or (b), by providing written notification to the authority's monitoring officer.

(2) A member must, within 28 days of becoming aware of any new personal interest or change to any personal interest registered under in paragraph (1), register that new personal interest or change by providing written notification to the authority's monitoring officer.

(3) Sub-paragraphs (1) and (2) do not apply to sensitive information in relation to which the member has made an application under paragraph 13.

Sensitive information

13.—(1) Where a member considers that the availability for inspection by the public of information relating to any personal interest which, but for this paragraph, must be registered in the authority's register of members' interests creates, or is likely to create, a serious risk that the member or a person who lives with him or her may be subjected to violence or intimidation (in this Code "sensitive information"), the member may, where the monitoring officer considers it appropriate, not include that sensitive information on the register of members' interests.

(2) A member must, within 28 days of becoming aware of any change of circumstances which leads him or her to believe that information excluded from the authority's register of members' interests is no longer sensitive information, notify the authority's monitoring officer of this fact and register the information concerned in the authority's register of members' interests.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order contains a model code of conduct as regards the conduct which is expected of members and co-opted members of relevant authorities in England and police authorities in England and Wales. Under section 51 of the Local Government Act 2000, each authority must adopt a code of conduct applying to its members and co-opted members which must incorporate any mandatory provisions of the model code. Under section 51(5) of that Act, where an authority

does not adopt such a code within six months of the Order coming into force, the mandatory provisions of the model code will apply to the members of the authority until it does.

Article 1 provides that this Order applies to relevant authorities in England and police authorities in England and Wales.

Article 2 provides that a model code is set out in the Schedule to the Order, and states which of its provisions are mandatory.

Article 3 revokes—

the Local Authorities (Model Code of Conduct) (England) Order 2001(a);

the Parish Councils (Model Code of Conduct) Order 2001(b);

the National Park and Broads Authorities (Model Code of Conduct) (England) Order 2001(c);

the Police Authorities (Model Code of Conduct) Order 2001(d).

These Orders continue to have effect in relation to allegations made before the date when the new code is adopted or applied to an authority.

The disapplication of certain enactments made by these Orders continues to have effect.

In the **Schedule to the Order**—

Paragraph 1 of the model code provides that the code applies whenever a member is acting in his or her official capacity, and that it does not apply in other circumstances unless otherwise indicated. Additionally, where a member is acting as a representative of his or her authority, he or she must continue to observe the authority's code, unless he or she is subject to another relevant authority's code, or unless (in relation to any other body) it conflicts with any other legal obligations.

Paragraph 2 provides that members must treat others with respect and not do anything which compromises the impartiality of those who work for the authority or bully anyone or intimidate persons involved in code of conduct cases.

Paragraph 3 provides that members must not without consent disclose confidential information they have acquired and must not prevent others from gaining access to information to which they are entitled.

Paragraph 4 provides that in a member's official capacity and in other circumstances, a member must not conduct himself or herself in a manner which could bring his or her authority into disrepute.

Paragraph 5 provides that a member must not in his or her official capacity or in other circumstances use his or her position improperly to gain an advantage or confer a disadvantage and that when using or authorising the use of the authority's resources, he or she must act in accordance with the authority's requirements and must not permit those resources to be used for political purposes.

Paragraph 6 provides that in reaching decisions a member must consider advice given by the chief finance officer and monitoring officer and must give reasons for decisions made.

Paragraph 7 provides a list of matters which constitute a personal interest in a matter.

Paragraph 8 provides that a member with a personal interest in a matter must disclose that interest at any meeting at which the matter is considered.

(a) S.I. 2001/3575.

(b) S.I. 2001/3576.

(c) S.I. 2001/3577.

(d) S.I. 2001/3578.

Paragraph 9 provides that a member with a personal interest also has a prejudicial interest if the interest could be regarded by a member of the public as so significant that it is likely to prejudice his judgement of the public interest. The paragraph provides that in the circumstances specified a member may regard himself as not having a prejudicial interest.

Paragraph 10 provides that a member who was involved in making an executive decision on a matter must not be involved in the overview and scrutiny committee's consideration of that matter, except in order to answer questions from that committee.

Paragraph 11 provides that a member with a prejudicial interest must, unless he has obtained a dispensation, withdraw from any meetings at which the matter is being considered, and must not improperly influence decisions in relation to the matter.

Paragraph 12 provides that a member must notify the monitoring officer of the personal interests and any change to those interests must also be notified.

Paragraph 13 provides that a member may notify the monitoring of any sensitive information the availability of which to the public creates, or is likely to create, a serious risk that the member or a person who lives with him or her may be subjected to violence or intimidation.

Annex B

Your views

We would welcome your views on the issues covered by this consultation paper and any other comments and suggestions you may have.

Questions

The specific questions which feature throughout the text of this paper are reproduced for ease of reference:

- Q1. Does the proposed text on the disclosure of confidential information strike an appropriate balance between the need to treat certain information as confidential, but to allow some information to be made public in defined circumstances when to do so would be in the public interest?
- Q2. Subject to powers being available to us to refer in the code to actions by members in their private capacity beyond actions which are directly relevant to the office of the member, is the proposed text which limits the proscription of activities in a member's private capacity to those activities which have already been found to be unlawful by the courts, appropriate?
- Q3. Is the Code of Recommended Practice on Local Authority Publicity serving a useful purpose? If the Publicity Code is abolished, do consultees think some or all of its provisions should be promulgated in a different way, eg via guidance issued by local government representative bodies, or should authorities be left to make their own decisions in this area without any central guidance? Should authorities not currently subject to the Publicity Code be required to follow it, or should the current position with regard to them be maintained?
- Q4. Does the proposed text with regard to gifts and hospitality adequately combine the need for transparency as well as proportionality in making public information with regard to personal interests?
- Q5. Does the proposed text relating to friends, family and those with a close personal association adequately cover the breadth of relationships which ought to be covered, to identify the most likely people who might benefit from decisions made by a member, including family, friends, business associates and personal acquaintances?
- Q6. Would it be appropriate for new exceptions to be included in the text as additions to the list of items which are not to be regarded as prejudicial?
- Q7. Is the proposed text relaxing the rules to allow increased representation at meetings, including where members attend to make representations, answer questions, or give evidence, appropriate?

Q8. Is there a better, more user-friendly way of ensuring the text is gender-neutral, for example, would consultees consider that amending the wording to say 'you' instead of 'he or she' or 'him or her' would result in a clearer and more accessible code for members?

Comments should be sent by e-mail or post by 9 March 2007 to:

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STANDARDS COMMITTEE

6

26 MARCH 2007

CONTRIBUTORS

DECISION IN THE CASE OF MAYOR LIVINGSTONE
VS. ADJUDICATION PANEL FOR ENGLAND

WARDS

ACE/H.Cttees

ALL

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Synopsis

The attached summary sets out the decision in the High Court in the case of *Mayor Livingstone vs. the Adjudication Panel for England*, and explores the implications of the case for the Code of Conduct.

RECOMMENDATION:

That the report be noted.

1. Implications of the judgment in the Mayor Livingstone case

The High Court judgment in the case concerning Mr Ken Livingstone, the Mayor of London, has significant implications for the interpretation of the Code of Conduct.

In particular, the judgment suggests that a member can only breach the Code of Conduct if they are performing their functions as a member, and that the Code of Conduct only applies to private conduct in limited cases. The Code covers members who misbehave when performing their duties, or who misuse their status while acting in a private capacity.

The judgment also established that the Code of Conduct cannot interfere with a member's right to freedom of speech in their private life.

2. The incident

Mr Livingstone had allegedly made offensive comments to a journalist on the evening of 8 February 2005, likening him to a concentration camp guard. Mr Livingstone was leaving a reception at City Hall when he was confronted by the reporter. During their exchange, Mr Livingstone asked the reporter whether he was "a German war criminal". The reporter pointed out that he was Jewish, and was offended by the remark, to which Mr Livingstone said: "Well you might be, but you're just like a concentration camp guard. You're just doing it 'cause you're paid to, aren't you?"

The Ethical Standards Officer investigating the case would ordinarily have referred this matter to the Greater London Authority's Standards Committee, but believed this was not appropriate because the London Assembly had already taken a view on Mr Livingstone's conduct. The Ethical Standards Officer therefore referred the matter to the Adjudication Panel for England.

The Adjudication Panel's case tribunal decided that Mr Livingstone had failed to comply with the Code of Conduct by bringing his office as Mayor into disrepute. The tribunal decided to suspend Mr Livingstone for four weeks from 1 March 2006.

Mr Livingstone appealed to the High Court against the decision, and the suspension was stayed pending the appeal.

3. Private capacity and disrepute

Mr Justice Collins, the judge presiding in the case, decided that Mr Livingstone had not been acting in his official capacity when he spoke to the reporter or performing his functions as Mayor. As a result, the requirement under paragraph 2(b) of the Code of Conduct, to “treat others with respect” while carrying out official duties, did not apply.

This still left the question of whether Mr Livingstone’s conduct was covered by the duty to avoid behaviour which could bring his office or authority into disrepute. This duty, under paragraph 4 of the Code of Conduct, applies when a member is acting in an official capacity, or in “any other circumstance”:

A member must not in his official capacity, or any other circumstance, conduct himself in a manner which could reasonably be regarded as bringing his office or authority into disrepute.

Mr Justice Collins found that the “any other circumstance” is limited to situations where a member is *performing his functions* as a member of the authority. This is in accordance with the commitment a member makes on assuming office, to:

...give to the authority a written undertaking that in performing his functions he will observe the authority’s code of conduct...

(Section 52(1)(a) of the *Local Government Act 2000*)

In this case, Mr Justice Collins found that Mr Livingstone was off-duty and not performing his functions as Mayor, and so paragraph 4 of the Code of Conduct did not apply to his behaviour.

This judgment means there are large areas of members’ private lives, when they are not ‘performing their functions’ as members, which are not covered by the Code of Conduct. Even unlawful conduct, such as convictions for shoplifting, drink-driving, or sexual offences, would not be covered by the Code, if the offences have nothing to do with the person’s position as a member (although members who are convicted of a criminal offence and sentenced to more than three months’ imprisonment are automatically disqualified from public office for five years).

Mr Justice Collins also found that the Adjudication Panel had applied the wrong test in relation to the issue of disrepute. His view was that damage to the reputation of the member as a person did not necessarily affect the reputation of his or her office or authority. He stated that there was a “real distinction between the man and the office”. There was a distinction between “misuse of office”, which can bring disrepute on the office, and “personal misconduct”, which is unlikely to do so. So, a politician may tarnish their own personal reputation by making offensive or insulting comments, but not necessarily that of their office.

Mr Justice Collins expressed the view that private capacity conduct will rarely be capable of bringing a member’s office or authority into disrepute. The Code of Conduct will only cover a member’s private behaviour where there is a direct link between the conduct and the office – for example, where a member uses their status as a member in a private dispute.

4. Freedom of speech

The right to freedom of expression, under Article 10 of the *European Convention on Human Rights*, is not an absolute one, but is:

...subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society ... for the protection of the reputation or rights of others...

An earlier High Court judgment had already stressed the need for a high level of protection to be given to political views (*Sanders v Kingston [2005] EWHC 1145*) but made it clear that because of the Code of Conduct members acting in their official capacity were not free to abuse people.

However, Mr Justice Collins found that when a member is not acting in an official capacity or performing their functions as a member the right to freedom of speech includes the right to abuse people:

Anyone is entitled to say what he likes of another provided he does not act unlawfully and so commits an offence under, for example, the Public Order Act ... Surprising as it may perhaps appear to some, the right of freedom of speech does extend to abuse.

Mr Justice Collins judged that it was disproportionate to apply the Code of Conduct to Mr Livingstone's remarks, as such a restraint on freedom of expression was not shown to be "necessary in a democratic society", even if the remarks were not political views.

The Code of Conduct cannot therefore interfere with a member's right to express inappropriate, intemperate or offensive views in their private life. This is in spite of what anyone might think of the views in question, and whether they are political opinions or personal abuse.

While Mr Justice Collins found that the statements were made in a private capacity and not covered by the Code, he nonetheless saw fit to criticise Mr Livingstone's comments to the journalist as "unnecessarily offensive", "intemperate", and "inappropriate", and suggested that he could have resolved the matter by making an apology.

5. The High Court's decision

The High Court allowed the appeal, set aside the finding that Mr Livingstone had failed to comply with the Code of Conduct, and quashed the suspension.

A copy of the [High Court's decision](#) is available via the Adjudication Panel for England's website.

26 MARCH 2007

CONTRIBUTORS

STANDARDS COMMITTEE WORK PROGRAMME

WARDS

ACE/H.Cttees

ALL

HLS

Synopsis

The attached appendix sets out the Committee's future work programme and scheduled reporting dates. Members are asked to note and update the work programme as necessary.

RECOMMENDATION:

That the Standards Committee note and agree its proposed future work programme .

APPENDIX A

STANDARDS COMMITTEE PROPOSED FORWARD WORK PROGRAMME

TITLE	PROPOSED DATE
Review & update as necessary of Council Local Protocols?	March 2007 Committee meeting
[The Committee to note that the Annual Council Meeting will appoint Grace Moody-Stuart as Chairman of the Committee for the Municipal Year 2007/8]	
Consideration of District Audit Management Letter on the operation of ethical governance framework	July 2007 Committee meeting
Feedback from Annual Conference & matters arising (Govt / Standards Board initiatives for the future)	October 2007 Committee meeting
	January 2008 Committee meeting
Review & update as necessary of Council Local Protocols	April 2008 Committee meeting

**LOCAL GOVERNMENT ACT 2000
BACKGROUND PAPERS**

No.	Brief Description of Background Papers	Name/Ext. of holder of file/copy	Department/Location
1.	Audit Commission ethical health-check LBHF 2005	John Cheong x 2062	Room 203, Hammersmith Town Hall